

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2022-34
August 22, 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

Notice 2022-33, page 147.

Notice 2022-33 extends the deadlines for amending a retirement plan or IRA to reflect the provisions of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and section 104 of Division M of the Further Consolidated Appropriations Act, 2020, known as the Bipartisan American Miners Act of 2019. In addition, this notice extends the deadline for amending a retirement plan to reflect the provisions of section 2203 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020). With respect to amendments made to reflect provisions of the SECURE Act, the notice also provides relief from the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended.

INCOME TAX

Notice 2022-34, page 150.

This Notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue

Service (IRS) intend to amend the regulations under section 987 to defer the applicability date of the final regulations under section 987, as well as certain related final regulations, by one additional year. The applicability date of these regulations has been deferred under prior notices to taxable years beginning after December 7, 2022. The Treasury Department and the IRS intend to amend §§1.861-9T, 1.985-5, 1.987-11, 1.988-1, 1.988-4, and 1.989(a)-1 of the 2016 final regulations and §§1.987-2 and 1.987-4 of the 2019 final regulations (the related 2019 final regulations) to provide that the 2016 final regulations and the related 2019 final regulations apply to taxable years beginning after December 7, 2023. The Notice also states that taxpayers may rely on certain related proposed regulations that cross-reference temporary regulations which have expired.

T.D. 9963, page 145.

Final regulations relating to the requirements for making a valid election to adjust the basis of partnership property in the case of a distribution of property by the partnership or a transfer of an interest in the partnership. The regulations affect partnerships and their partners by removing a regulatory burden in making an election to adjust the basis of partnership property.

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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I

26 CFR 1.754-1: Time and manner of making elections to adjust basis of partnership property

T.D. 9963

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Streamlining the Section 754 Election Statement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirements for making a valid election to adjust the basis of partnership property in the case of a distribution of property by the partnership or a transfer of an interest in the partnership. These regulations affect partnerships and their partners by removing a regulatory burden in making an election to adjust the basis of partnership property.

DATES: *Effective date:* These regulations are effective on August 5, 2022.

Applicability date: For dates of applicability, see §1.754-1(d).

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, at (202) 317-5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 754 of the Internal Revenue Code (Code). Section 754 provides that if a partnership files an election (section 754 election), in accordance with regulations prescribed by the Secretary of the Treasury or her delegate (Secretary),

the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. The section 754 election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years. The section 754 election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

Section 1.754-1(b) prescribes the requirements for making the section 754 election. Generally, a partnership makes the section 754 election in a written statement (section 754 election statement) filed with the partnership return (whether filed electronically or on paper) for the taxable year during which the distribution or transfer occurs. For the section 754 election to be valid, the return must be filed not later than the time prescribed for filing the return for such taxable year, including extensions. Under §1.754-1(b) of the existing regulations, one of the partners must sign the section 754 election statement.

On October 12, 2017, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-116256-17) in the **Federal Register** (82 FR 47408) to remove the signature requirement from §1.754-1(b). The IRS did not receive any substantive written public comments in response to the notice of proposed rulemaking. No public hearing was requested or held. Therefore, the proposed regulations are adopted by this Treasury decision without change.

Special Analyses

I. Regulatory Planning and Review

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the

Office of Management and Budget regarding review of tax regulations.

II. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that these regulations reduce the information currently required to be collected in making an election to adjust the basis of partnership property and thereby will reduce burden on small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

III. 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 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.

IV. 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.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. The information collection described in this final rule has been assigned control number 1545-0123.

Drafting Information

The principal author of these regulations is Charles D. Wien of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). 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 record-keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.754-1 in numerical order to read as follows:

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

Section 1.754-1 also issued under 26 U.S.C. 754.

* * * * *

Par. 2. Section 1.754-1 is amended by revising the fourth sentence of paragraph (b)(1) and adding paragraph (d) to read as follows:

§1.754-1 Time and manner of making election to adjust basis of partnership property.

* * * * *

(b) * * *

(1) * * * The statement required by this paragraph (b)(1) must set forth the name and address of the partnership making the election and contain a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b). * * *

* * * * *

(d) *Applicability date.* The fourth sentence of paragraph (b)(1) of this section applies to taxable years ending on or after August 5, 2022. Taxpayers may, however, apply the fourth sentence of paragraph (b)(1) of this section to taxable years ending before August 5, 2022.

Approved: June 7, 2022.

Douglas W. O'Donnell,
Deputy Commissioner for Services
and Enforcement.

Lily Batchelder,
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register on August 8, 2022, 08:45 a.m., and published in the issue of the Federal Register for August 5, 2022, 87 FR 47931)

Part III

Notice 2022-33

I. PURPOSE

This notice extends the deadlines for amending a retirement plan or individual retirement arrangement (IRA) to reflect certain provisions of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), and section 104 of Division M of the Further Consolidated Appropriations Act, 2020, known as the Bipartisan American Miners Act of 2019 (Miners Act), by modifying Notice 2020-68, 2020-38 IRB 567, and Notice 2020-86, 2020-53 IRB 1786. In addition, this notice extends the deadline for amending a retirement plan to reflect the provisions of section 2203 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, 134 Stat. 281 (2020).

Under this notice, the extended amendment deadline for (1) a qualified retirement plan or section 403(b) plan (including an applicable collectively bargained plan) that is not a governmental plan or (2) an IRA is December 31, 2025. Later deadlines apply with respect to governmental retirement plans (including governmental plans under section 457(b) of the Internal Revenue Code (Code)). Pursuant to these modifications, with respect to an amendment made to reflect provisions of the SECURE Act, the period during which the amendment is eligible, if applicable, for relief from the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA), is extended to the applicable extended plan amendment deadline.¹

II. BACKGROUND

A. In General

1. Section 401(b) of the Code

Section 401(b) of the Code provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 of the Income Tax Regulations describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner of Internal Revenue (Commissioner) the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

Section 1.401(b)-1 provides that a plan that fails to satisfy the requirements of section 401(a) solely as a result of a disqualifying provision defined under § 1.401(b)-1(b) need not be amended to comply with those requirements until the last day of the remedial amendment period with respect to the disqualifying provision, provided the amendment is made retroactively effective to the beginning of the remedial amendment period. Under § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision designated, at the Commissioner's discretion, as a disqualifying provision that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements or (2) is integral to a qualification requirement of the Code that has been changed. Section 1.401(b)-1(c)(1) provides that a disqualifying provision under § 1.401(b)-1(b)(3) includes a provision integral to the applicable change in the qualification requirements of the Code, if the plan was in effect on the date

the change in those requirements became effective with respect to the plan.

For a disqualifying provision described in § 1.401(b)-1(b)(3), § 1.401(b)-1(d)(1)(iv) and (v) provides that the remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, § 1.401(b)-1(d)(2)(i) and (ii) provides that the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(3) ends on the later of: (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. In the case of a plan maintained by more than one employer, § 1.401(b)-1(d)(2)(iii) provides that the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

2. Rev. Proc. 2016-37 and Rev. Proc. 2019-39

Rev. Proc. 2016-37, 2016-29 IRB 136,² sets forth plan amendment deadlines for qualified plans that apply except as otherwise provided by statute or in regulations or other guidance published in the Internal Revenue Bulletin. For example, for an individually designed qualified plan that is not a governmental plan (within the meaning of section 414(d) of the Code), the plan amendment deadline for a disqualifying provision with respect to a change in qualification requirements is the last day

¹ With respect to pre-approved plans, the extended plan amendment deadlines apply to both interim and discretionary amendments. It is anticipated that the cumulative list for the fourth remedial amendment cycle for pre-approved defined contribution plans (pre-approved plans for which the opinion letter application submission window falls between February 1, 2024, and January 31, 2025) will include provisions of the SECURE Act, Miners Act, and CARES Act. Accordingly, it is anticipated that the pre-approved defined contribution plans submitted for that cycle will need to include provisions that reflect provisions of the SECURE Act, Miners Act, and CARES Act.

² For purposes of this notice, references to Rev. Proc. 2016-37 are to Rev. Proc. 2016-37, as modified by Rev. Proc. 2017-41, 2017-29 IRB 92, Rev. Proc. 2019-20, 2019-20 IRB 1182, Rev. Proc. 2020-40, 2020-38 IRB 575, and Rev. Proc. 2021-38, 2021-38 IRB 425.

of the second calendar year that begins after the issuance of the Required Amendments List (RA List) in which the change in qualification requirements appears, and the plan amendment deadline for a discretionary amendment is the end of the plan year in which the plan amendment is operationally put into effect. Rev. Proc. 2019-39, 2019-42 IRB 945,³ sets forth similar plan amendment deadlines for section 403(b) plan form defects first occurring after June 30, 2020, and for discretionary amendments made to section 403(b) plans with respect to plan years beginning on or after January 1, 2020. Although these revenue procedures provide plan amendment deadlines, they do not provide relief from the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA, if applicable, for amendments adopted by those deadlines.

B. SECURE Act and Miners Act

1. Section 601 of the SECURE Act

Section 601 of the SECURE Act provides, in general, that a retirement plan or annuity contract will be treated as being operated in accordance with the terms of the plan during the period described in clause (3) of this section II.B.1 and, except as provided by the Secretary of the Treasury (Secretary), or the Secretary's delegate, a retirement plan will not fail to satisfy the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA,⁴ as a result of a plan amendment made pursuant to a provision of the SECURE Act or the regulations thereunder, provided that:

(1) the amendment is adopted no later than the last day of the first plan year beginning on or after January 1, 2022, or, for an applicable collectively bargained plan (a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 20, 2019) in the case of section 401 of the SECURE Act, or for a section

414(d) governmental plan, the last day of the first plan year beginning on or after January 1, 2024, or such later date as the Secretary may prescribe (the section 601 date);

(2) the amendment applies retroactively to the effective date of the SECURE Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE Act or the regulations thereunder, the effective date specified by the plan); and

(3) the plan or contract is operated as if the amendment were in effect during the period beginning on the effective date of the SECURE Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE Act or the regulations thereunder, the effective date specified by the plan or contract) and ending on the section 601 date or, if earlier, the date the amendment is adopted.

2. Section 104 of the Miners Act

Section 104(a) of the Miners Act amends section 401(a)(36) of the Code to lower the minimum age for allowable in-service distributions from a qualified pension plan from age 62 to age 59½. Section 104(b) of the Miners Act amends the distribution requirements of section 457(d)(1)(A)(i) of the Code to provide that, in the case of a governmental plan under section 457(b) of the Code, amounts under the plan may be made available to a participant as early as the calendar year in which the participant attains age 59½.

3. Notice 2020-68

Q&A G-1 of Notice 2020-68 sets forth deadlines for adopting retirement plan amendments relating to certain provisions of the SECURE Act, the regulations thereunder, and section 104 of the Miners Act.

Q&A G-1(a) of Notice 2020-68 provides, in part, that, in general, for a qualified plan that is not a governmental plan within the meaning of section 414(d), or

an applicable collectively bargained plan, the deadline to amend a plan for provisions of the SECURE Act, the regulations thereunder, or section 104 of the Miners Act is the last day of the first plan year beginning on or after January 1, 2022. The plan amendment deadline for a governmental plan within the meaning of section 414(d) of the Code, or for an applicable collectively bargained plan is the last day of the first plan year beginning on or after January 1, 2024.

Q&A G-1(b) of Notice 2020-68 provides, in part, that, in general, the deadline for a section 403(b) plan that is not maintained by a public school, as described in section 403(b)(1)(A)(ii), to amend a plan for provisions of the SECURE Act or the regulations thereunder is the last day of the first plan year beginning on or after January 1, 2022. The plan amendment deadline for a section 403(b) plan that is maintained by a public school, as described in section 403(b)(1)(A)(ii), is the last day of the first plan year beginning on or after January 1, 2024.

Q&A G-1(c) of Notice 2020-68 provides that the deadline to amend a governmental plan under section 457(b) for provisions of the SECURE Act, the regulations thereunder, or section 104 of the Miners Act is the later of (i) the last day of the first plan year beginning on or after January 1, 2024, or (ii) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of section 457(b) of the Code.

Q&A G-1(d) of Notice 2020-68 provides, in part, that the deadline to amend the trust governing an IRA that is an individual retirement account or the contract issued by an insurance company with respect to an IRA that is an individual retirement annuity for provisions of the SECURE Act or the regulations thereunder is December 31, 2022, or such later date as the Secretary prescribes in guidance.

³ For purposes of this notice, references to Rev. Proc. 2019-39 are to Rev. Proc. 2019-39, as modified by Notice 2020-35, 2020-25 IRB 948, Rev. Proc. 2020-40, and Rev. Proc. 2021-37, 2021-38 IRB 385.

⁴ Section 411(d)(6) provides, generally, that a plan will not satisfy section 401(a) if an amendment to the plan decreases a participant's accrued benefit. For this purpose, 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 reducing accrued benefits. Section 204(g) of ERISA provides parallel rules to the rules of section 411(d)(6) of the Code. The Internal Revenue Service (IRS) has interpretive authority over section 204(g) of ERISA pursuant to Reorganization Plan No. 4 of 1978, 5 U.S.C. App.

4. Notice 2020-86

Notice 2020-86 provides guidance in the form of questions and answers with respect to sections 102 and 103 of the SECURE Act, including guidance relating to plan amendments. For example, Q&A-2 of Notice 2020-86 generally provides that if a plan incorporates by reference the automatic contribution maximum qualified percentage of section 401(k)(13)(C)(iii) of the Code and the plan continues to apply the maximum qualified percentage of 10 percent that applied before section 401(k)(13)(C)(iii) was amended by section 102(a) of the SECURE Act, then the plan would need to be amended on or before the plan amendment deadline determined under section 601(b) of the SECURE Act, as described in Q&A G-1 of Notice 2020-68. The amendment would need to provide explicitly that the plan's maximum qualified percentage is 10 percent, retroactive to the first day of the first plan year beginning after December 31, 2019.

Q&A-3 of Notice 2020-86 provides that, in general, the plan amendment timing provisions of section 601 of the SECURE Act, as described in Q&A G-1 of Notice 2020-68, apply to a plan amendment adopted under section 102 of the SECURE Act. Q&A-3 of Notice 2020-86 also provides that a plan may be amended to reflect section 102 of the SECURE Act after the applicable plan amendment deadline under section 601 of the SECURE Act, in accordance with the general discretionary amendment deadlines set forth in Rev. Proc. 2016-37.

Q&A-13 of Notice 2020-86 provides that, in general, the plan amendment timing provisions of section 601 of the SECURE Act, as described in Q&A G-1 of Notice 2020-68, apply to a plan amendment adopted under section 103(b) or (c) of the SECURE Act (even if the applicable plan amendment deadline under section 601 of the SECURE Act is later than

the deadline under section 103(b) or (c) of the SECURE Act). Q&A-13 of Notice 2020-86 also provides that a plan may be amended after the applicable plan amendment deadline under section 601 of the SECURE Act, in accordance with the plan amendment provisions of section 103(b) or (c) of the SECURE Act (which provide an exception to the general discretionary amendment deadlines set forth in Rev. Proc. 2016-37).

C. CARES Act

Section 2203(a) of the CARES Act added section 401(a)(9)(I) to the Code, which provides for a waiver of required minimum distributions for defined contribution plans and IRAs for 2020. Section 2203(c) of the CARES Act provides that a plan or contract may operate in accordance with an expected plan or contract amendment relating to the changes made by section 2203, provided the plan or contract amendment is adopted no later than the last day of the first plan year beginning in 2022 (or, in the case of a governmental plan, 2024). Section 2203(c) of the CARES Act also provides that a plan or contract will not fail to satisfy section 411(d)(6) of the Code by reason of such an amendment, except as provided by the Secretary.⁵

III. EXTENSION OF PLAN AMENDMENT DEADLINE; ANTI-CUTBACK RELIEF⁶

A. SECURE Act and Miners Act

Pursuant to the authority of the Secretary under section 601 of the SECURE Act, the deadlines for amending a retirement plan or IRA to reflect the provisions of the SECURE Act, the regulations thereunder, or section 104 of the Miners Act, as set forth in Notice 2020-68 and Notice 2020-86, are hereby extended as follows:

(1) The first paragraph under Q&A G-1(a) of Notice 2020-68 is revised to read as follows:

“In general, for a qualified plan (including an applicable collectively bargained plan) that is not a governmental plan within the meaning of section 414(d) of the Code, the deadline to amend a plan for provisions of the SECURE Act, the regulations thereunder, or section 104 of the Miners Act is December 31, 2025. The plan amendment deadline for a qualified governmental plan, within the meaning of section 414(d), is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.”

(2) The first paragraph under Q&A G-1(b) of Notice 2020-68 is revised to read as follows:

“In general, the deadline for a section 403(b) plan (including an applicable collectively bargained plan) that is not maintained by a public school, as described in section 403(b)(1)(A)(ii), to amend a plan for provisions of the SECURE Act or the regulations thereunder is December 31, 2025. The plan amendment deadline for a section 403(b) plan that is maintained by a public school, as described in section 403(b)(1)(A)(ii), is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023.”

(3) Q&A G-1(c) is revised to read as follows:

“The deadline to amend a governmental plan under section 457(b) of the Code for provisions of the SECURE Act, the regulations thereunder, or section 104 of the Miners Act is the later of (i) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31,

⁵Notice 2020-51, 2020-29 IRB 73, which sets forth guidance relating to a waiver of 2020 required minimum distributions under section 2203 of the CARES Act, provides that an IRA does not have to be amended to reflect the waiver and provides a sample amendment for defined contribution plans that plan sponsors may adopt to implement section 401(a)(9)(I) of the Code. The notice provides that, although employers may adopt amendments pursuant to section 2203 of the CARES Act other than those provided in the sample amendment, the Department of the Treasury and the IRS are exercising their authority under section 2203(c) of the CARES Act to deny Code section 411(d)(6) relief for a plan amendment that eliminates an optional form of benefit.

⁶It is anticipated that certain guidance issued under the SECURE Act will appear on the 2023 RA List. The extended deadlines set forth in this section III are consistent with the deadlines that would apply if the general amendment timing principles set forth in Rev. Proc. 2016-37 and Rev. Proc. 2019-39 were applied to that SECURE Act guidance. Accordingly, it is anticipated that sponsors will be able to adopt all SECURE Act, Miners Act, and CARES Act amendments described in this notice on a single date.

2023, or (ii) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of section 457(b) of the Code.”

(4) The first paragraph under Q&A G-1(d) of Notice 2020-68 is revised to read as follows:

“The deadline to amend the trust governing an IRA that is an individual retirement account or the contract issued by an insurance company with respect to an IRA that is an individual retirement annuity for provisions of the SECURE Act or the regulations thereunder is December 31, 2025, or such later date as the Secretary prescribes in guidance.”

(5) Q&A-2, Q&A-3, and Q&A-13 of Notice 2020-86 are modified by replacing all references to “Q&A G-1 of Notice 2020-68” with “Q&A G-1 of Notice 2020-68, as modified by Notice 2022-33”.

In addition, amendments to a retirement plan to reflect a provision of the SECURE Act or the regulations thereunder that are made on or before the dates as extended under this section III.A will not cause the retirement plan to fail to satisfy the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA by reason of such amendments.

B. CARES Act

Pursuant to the authority of the Commissioner under section 1.401(b)-1(f), the deadlines for amending a retirement plan to reflect the provisions of section 2203 of the CARES Act are hereby extended as follows:

(1) the deadline for amending a retirement plan that is not a governmental plan is December 31, 2025; and

(2) the deadline for amending a retirement plan that is a governmental plan is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023, or, if later, with respect to a governmental plan under section 457(b) of the Code, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was

administered in a manner that is inconsistent with the requirements of section 457(b).

IV. EFFECT ON OTHER DOCUMENTS

Part G of Notice 2020-68 is modified.

Q&A-2, Q&A-3, and Q&A-13 of Notice 2020-86 are modified.

V. DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

Deferred Applicability Dates for Foreign Currency Guidance

Notice 2022-34

SECTION 1. PURPOSE

This Notice announces that the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to amend the regulations under section 987 to defer the applicability date of the 2016 final regulations and the related 2019 final regulations (as defined below) by one additional year.

On December 8, 2016, the Treasury Department and the IRS published Treasury Decision 9794 (81 Fed. Reg. 88806), which contained final regulations under section 987 and amendments to existing regulations under sections 861, 985, 988, and 989. *See* §§1.861-9T(g)(2)(ii)(A)(I) and (g)(2)(vi); 1.985-5; 1.987-0 through 1.987-11; 1.988-0; 1.988-1(a)(4), (a)(10)(ii), and (i); 1.988-4(b)(2); and 1.989(a)-1(b)(2)(i), (b)(4), (d)(3), and (d)(4) (the “2016 final regulations”) for the rules contained in Treasury Decision 9794. The same day, the Treasury Department and the IRS also published Treasury Decision 9795 (81 Fed. Reg. 88854), which contained temporary regulations

under sections 987 and 988 (the “temporary regulations”), and concurrently published a notice of proposed rulemaking by cross-reference to the temporary regulations (REG-128276-12, 81 Fed. Reg. 88882) (the “proposed regulations”).

On May 13, 2019, the Treasury Department and the IRS published Treasury Decision 9857 (84 Fed. Reg. 20790), which adopted in final form §§1.987-2T(c)(9), 1.987-4T(c)(2) and (f), and 1.987-12T and withdrew §1.987-7T. The other temporary regulations expired on December 6, 2019. The proposed regulations that were not finalized in 2019 remain outstanding.

Earlier notices deferred the applicability dates of the 2016 final regulations, §§1.987-1T (other than §§1.987-1T(g)(2)(i)(B) and (g)(3)(i)(H)) through 1.987-4T, 1.987-6T, 1.987-7T, 1.988-1T, and 1.988-2T(i) of the temporary regulations (the “related temporary regulations”), and §§1.987-2(c)(9) and 1.987-4(c)(2) and (f) of the 2019 final regulations (the “related 2019 final regulations”). Most recently, on October 25, 2021, Notice 2021-59, 2021-43 I.R.B. 664, announced that future guidance would defer the applicability date of the 2016 final regulations and the related 2019 final regulations by one additional year to taxable years beginning after December 7, 2022. Regulations deferring these applicability dates have not yet been issued.

SECTION 2. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend the applicability dates in §§1.861-9T, 1.985-5, 1.987-11, 1.988-1, 1.988-4, and 1.989(a)-1 of the 2016 final regulations and §§1.987-2 and 1.987-4 of the related 2019 final regulations to provide that the 2016 final regulations and the related 2019 final regulations apply to taxable years beginning after December 7, 2023 (the “amended applicability date”). *See* §§1.861-9T(g)(2)(vi); 1.985-5(g); 1.987-2(e)(2); 1.987-4(h)(2); 1.987-11(a); 1.988-1(i); 1.988-4(b)(2)(ii); 1.989(a)-1(b)(4); 1.989(a)-1(d)(4). Thus, following the amendments described in this Notice, the 2016 final regulations and the related 2019 final regulations would apply to the taxable year beginning on January 1, 2024, for calendar-year taxpayers.

The Treasury Department and the IRS do not intend to amend the applicability date of §1.987-12. *See* §1.987-12(j).

A taxpayer may choose to apply the 2016 final regulations, the related temporary regulations (until they were revoked on May 13, 2019, or expired on December 6, 2019, as applicable), and the related 2019 final regulations (beginning on May 13, 2019) to taxable years beginning after December 7, 2016, and before the amended applicability date provided the taxpayer consistently applies those regulations to such taxable years with respect to all section 987 QBUs directly or indirectly owned by the taxpayer on the transition date as well as all section 987 QBUs directly or indirectly owned on the transition date by members that file a consolidated return with the taxpayer or by any controlled foreign corporation, as defined in section 957, in which a member owns more than 50 percent of the voting power or stock value, as determined under section 958(a) (collectively, “related parties”). A taxpayer and its related parties are not, however, required to apply §1.987-7T of the related temporary regulations to any part of a taxable year ending on or after May 13, 2019. For example, a calendar-year taxpayer applying the regulations in accordance with this paragraph is not required to apply §1.987-7T to the period

beginning on January 1, 2019 and ending on May 13, 2019 (when §1.987-7T was revoked).

The transition date is the first day of the first taxable year to which §§1.987-1 through 1.987-10 are applicable with respect to a taxpayer under §1.987-11. Section 1.987-11(c). Therefore, if a taxpayer chooses to apply §§1.987-1 through 1.987-10 to a taxable year beginning before the amended applicability date, the transition date is the first day of the first taxable year in which the taxpayer chooses to apply §§1.987-1 through 1.987-10.

For periods following the expiration of the temporary regulations, a taxpayer may rely on §§1.987-1 (other than §§1.987-1(g)(2)(i)(B) and (g)(3)(i)(H)), 1.987-3, 1.987-6, 1.988-1, and 1.988-2(i) of the proposed regulations, provided that the taxpayer and its related parties consistently follow those proposed regulations in their entirety and apply the 2016 final regulations and the related 2019 final regulations for the same taxable year. In addition, a taxpayer may rely on §§1.987-1(g)(2)(i)(B) and (g)(3)(i)(H) and 1.987-8 of the proposed regulations, provided that the taxpayer and its related parties consistently follow those proposed regulations in their entirety. A taxpayer may rely on §1.987-7 or 1.988-2(b)(16) of the

proposed regulations, provided that the taxpayer and its related parties consistently follow each section of those proposed regulations on which it relies.

SECTION 3. TAXPAYER RELIANCE

Before the regulations under section 987 are amended as described in section 2 of this Notice, taxpayers may rely on the provisions of this Notice.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2021-59, 2021-43 I.R.B. 664; Notice 2020-73, 2020-41 I.R.B. 886; Notice 2019-65, 2019-52 I.R.B. 1507; Notice 2018-57, 2018-26 I.R.B. 774; and Notice 2017-57, 2017-42 I.R.B. 325 are modified, and as so modified, are hereby superseded.

SECTION 5. DRAFTING INFORMATION

The principal author of this Notice is Jack Zhou of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Jack Zhou at (202) 317-5467 (not a toll-free number).

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.
FR.—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 List¹

Bulletin 2022–34

Announcements:

2022-14, 2022-31 I.R.B. 136
2022-15, 2022-31 I.R.B. 136
2022-16, 2022-33 I.R.B. 144

Notices:

2022-29, 2022-28 I.R.B. 66
2022-30, 2022-28 I.R.B. 70
2022-31, 2022-29 I.R.B. 85
2022-32, 2022-32 I.R.B. 137
2022-33, 2022-34 I.R.B. 147
2022-34, 2022-34 I.R.B. 150

Proposed Regulations:

REG-130975-08, 2022-28 I.R.B. 71
REG 130675-17, 2022-30 I.R.B. 104

Revenue Procedures:

2022-25, 2022-27 I.R.B. 3
2022-28, 2022-27 I.R.B. 65
2022-26, 2022-29 I.R.B. 90
2022-32, 2022-30 I.R.B. 101
2022-30, 2022-31 I.R.B. 112
2022-29, 2022-33 I.R.B. 141
2022-34, 2022-33 I.R.B. 143

Revenue Rulings:

2022-12, 2022-27 I.R.B. 1
2022-13, 2022-30 I.R.B. 99
2022-14, 2022-31 I.R.B. 110

Treasury Decisions:

9963, 2022-34 I.R.B. 145

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 Items¹

Bulletin 2022–34

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.

Internal Revenue Service

Washington, DC 20224

Official Business
Penalty for Private Use, \$300

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.