INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2022–47
November 21, 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. Proc. 2022-40, page 487.
Rev. Proc. 2022-40 modifies Rev. Proc. 2016-37, 2016-29 IRB 136, which, in part, provides the circumstances under which a plan sponsor may submit a determination letter application to the Internal Revenue Service with respect to a qualified individually designed plan, to permit the submission of determination letter applications for section 403(b) individually designed plans. This revenue procedure also (1) incorporates modifications of Rev. Proc. 2016-37 set forth in Rev. Proc. 2019-20, 2019-20 IRB 1182, relating to the submission of determination letter applications for a determination with respect to qualified merged plans, (2) clarifies and modifies the provisions of Rev. Proc. 2019-39, 2019-42 IRB 945, that relate to the remedial amendment period for section 403(b) individually designed plan form defects first occurring after June 30, 2020, (3) extends the expiration of the remedial amendment period for new qualified individually designed plans, (4) modifies the circumstances under which a plan is considered to have been issued an initial plan determination, and (5) modifies the scope of review of qualified individually designed plans submitted under the determination letter program.

INCOME TAX

Announcement 2022-22, page 497.
This announcement contains a correction to Notice 2022-41, 2022-43 I.R.B. 304 (Oct. 24, 2022), which contains a typographical error in the "GUIDANCE" section. This announcement corrects that error. Notice 2022-41 corrected.

Rev. Rul. 2022-21, page 468.
Section 995 - Taxation of DISC Income to Shareholders. 2022 Base Period T-Bill Rate. The "base period T-bill rate" for the period ending September 30, 2022 is published as required by section 995(f) of the Internal Revenue Code.

Notice 2022-56, page 480.
Section 45W, as added by the IRA, provides a credit for purchasing and placing in service qualified commercial clean vehicles during a taxable year. The amount of the credit shall be the lesser of 15 percent of the basis of such vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or the incremental cost of such vehicle, as defined in § 45W(b)(2). The amount of the credit shall not exceed $7,500 in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, and $40,000 for all other vehicles. Section 30C provides a credit for the cost of qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year. Section 30C(a) allows a credit in an amount equal to 30 percent (6 percent in the case of property of a character subject to depreciation) of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year. The IRA increased the limitation of the credit from $30,000 to $100,000 in § 30C(b).

Notice 2022-57, page 482.
This notice requests comments on general as well as specific questions pertaining to issues arising under § 45Q due to changes made by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act od 2022 (IRA), to help to

Finding Lists begin on page ii.

inform development of future guidance implementing those changes.

Notice 2022-58, page 483.
Following enactment of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), this notice requests comments related to the clean hydrogen and clean fuel provisions under §§ 45V and 45Z of the Internal Revenue Code. Comments received in response to this notice will help to inform development of guidance implementing §§ 45V and 45Z.

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

Section 995.—Taxation of DISC Income to Shareholders

2022 Base Period T-Bill Rate. The "base period T-bill rate" for the period ending September 30, 2022, is published as required by section 995(f) of the Internal Revenue Code.

Rev. Rul. 2022-21

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a domestic international sales corporation ("DISC") shall pay interest for each taxable year in an amount equal to the product of the "shareholder's DISC-related deferred tax liability" for the year (as defined in section 995(f)(2)) and the "base period T-bill rate." Under section 995(f)(4), the base period T-bill rate is "the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder."

The base period T-bill rate for the period ending September 30, 2022, is 1.71 percent.

Pursuant to section 6622 of the Internal Revenue Code, interest must be compounded daily. The table below provides factors for compounding the 2022 base period T-bill rate daily for any number of days in the shareholder's taxable year (including for a 52-53 week taxable year). To compute the amount of the interest charge for the shareholder's taxable year, multiply the amount of the shareholder's DISC-related deferred tax liability for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder's taxable year for which the interest charge is being determined is a short taxable year, if the shareholder uses a 52-53 week taxable year, or if the shareholder's taxable year is a leap year.

For the base period T-bill rates for periods ending in prior years, see Rev. Rul. 2021-22, 2021-47 I.R.B. 726; Rev. Rul. 2020-25, 2020-48 I.R.B. 1109; Rev. Rul. 2019-27, 2019-51 I.R.B. 1378; Rev. Rul. 2018-31, 2018-50 I.R.B. 848; Rev. Rul. 2017-23, 2017-49 I.R.B. 546; and Rev. Rul. 2017-01, 2017-03 I.R.B. 377.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jacob H. Larson of the Office of Associate Chief Counsel (International). For further information regarding the revenue ruling, contact Mr. Larson at (202) 317-3800 (not a toll-free number).

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
1	0.000046849
2	0.000093701
3	0.000140555
4	0.000187410
5	0.000234269
6	0.000281129
7	0.000327991
8	0.000374856
9	0.000421723
10	0.000468592
11	0.000515463
12	0.000562337
13	0.000609212
14	0.000656090
15	0.000702970

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
16	0.000749852
17	0.000796737
18	0.000843624
19	0.000890512
20	0.000937403
21	0.000984297
22	0.001031192
23	0.001078090
24	0.001124990
25	0.001171892
26	0.001218796
27	0.001265702
28	0.001312611
29	0.001359522
30	0.001406435
31	0.001453350
32	0.001500267
33	0.001547187
34	0.001594109
35	0.001641033
36	0.001687959
37	0.001734887
38	0.001781818
39	0.001828751
40	0.001875686
41	0.001922623
42	0.001969562
43	0.002016504
44	0.002063448
45	0.002110394
46	0.002157342
47	0.002204292
48	0.002251245
49	0.002298199
50	0.002345156

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
51	0.002392116
52	0.002439077
53	0.002486041
54	0.002533006
55	0.002579974
56	0.002626945
57	0.002673917
58	0.002720892
59	0.002767868
60	0.002814847
61	0.002861829
62	0.002908812
63	0.002955797
64	0.003002785
65	0.003049775
66	0.003096767
67	0.003143762
68	0.003190758
69	0.003237757
70	0.003284758
71	0.003331761
72	0.003378767
73	0.003425774
74	0.003472784
75	0.003519796
76	0.003566811
77	0.003613827
78	0.003660846
79	0.003707866
80	0.003754889
81	0.003801915
82	0.003848942
83	0.003895972
84	0.003943004
85	0.003990038

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
86	0.004037074
87	0.004084112
88	0.004131153
89	0.004178196
90	0.004225241
91	0.004272288
92	0.004319338
93	0.004366389
94	0.004413443
95	0.004460499
96	0.004507558
97	0.004554618
98	0.004601681
99	0.004648746
100	0.004695813
101	0.004742882
102	0.004789954
103	0.004837027
104	0.004884103
105	0.004931181
106	0.004978262
107	0.005025344
108	0.005072429
109	0.005119516
110	0.005166605
111	0.005213696
112	0.005260790
113	0.005307886
114	0.005354984
115	0.005402084
116	0.005449186
117	0.005496291
118	0.005543398
119	0.005590507
120	0.005637618

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
121	0.005684731
122	0.005731847
123	0.005778965
124	0.005826085
125	0.005873207
126	0.005920332
127	0.005967458
128	0.006014587
129	0.006061718
130	0.006108852
131	0.006155987
132	0.006203125
133	0.006250265
134	0.006297407
135	0.006344551
136	0.006391698
137	0.006438847
138	0.006485998
139	0.006533151
140	0.006580306
141	0.006627464
142	0.006674624
143	0.006721786
144	0.006768950
145	0.006816116
146	0.006863285
147	0.006910456
148	0.006957629
149	0.007004804
150	0.007051982
151	0.007099161
152	0.007146343
153	0.007193527
154	0.007240714
155	0.007287902

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
156	0.007335093
157	0.007382286
158	0.007429481
159	0.007476678
160	0.007523878
161	0.007571080
162	0.007618284
163	0.007665490
164	0.007712699
165	0.007759909
166	0.007807122
167	0.007854337
168	0.007901554
169	0.007948774
170	0.007995996
171	0.008043220
172	0.008090446
173	0.008137674
174	0.008184905
175	0.008232137
176	0.008279372
177	0.008326610
178	0.008373849
179	0.008421091
180	0.008468334
181	0.008515580
182	0.008562829
183	0.008610079
184	0.008657332
185	0.008704587
186	0.008751844
187	0.008799103
188	0.008846365
189	0.008893629
190	0.008940894

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
191	0.008988163
192	0.009035433
193	0.009082706
194	0.009129981
195	0.009177258
196	0.009224537
197	0.009271818
198	0.009319102
199	0.009366388
200	0.009413676
201	0.009460966
202	0.009508259
203	0.009555554
204	0.009602851
205	0.009650150
206	0.009697451
207	0.009744755
208	0.009792061
209	0.009839369
210	0.009886679
211	0.009933992
212	0.009981306
213	0.010028623
214	0.010075942
215	0.010123264
216	0.010170587
217	0.010217913
218	0.010265241
219	0.010312571
220	0.010359904
221	0.010407239
222	0.010454575
223	0.010501915
224	0.010549256
225	0.010596599

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
226	0.010643945
227	0.010691293
228	0.010738643
229	0.010785996
230	0.010833350
231	0.010880707
232	0.010928066
233	0.010975428
234	0.011022791
235	0.011070157
236	0.011117525
237	0.011164895
238	0.011212267
239	0.011259642
240	0.011307019
241	0.011354398
242	0.011401779
243	0.011449163
244	0.011496548
245	0.011543936
246	0.011591326
247	0.011638719
248	0.011686113
249	0.011733510
250	0.011780909
251	0.011828310
252	0.011875714
253	0.011923119
254	0.011970527
255	0.012017937
256	0.012065350
257	0.012112764
258	0.012160181
259	0.012207600
260	0.012255021

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
261	0.012302445
262	0.012349871
263	0.012397298
264	0.012444729
265	0.012492161
266	0.012539596
267	0.012587032
268	0.012634471
269	0.012681913
270	0.012729356
271	0.012776802
272	0.012824250
273	0.012871700
274	0.012919152
275	0.012966607
276	0.013014063
277	0.013061522
278	0.013108984
279	0.013156447
280	0.013203913
281	0.013251381
282	0.013298851
283	0.013346323
284	0.013393798
285	0.013441275
286	0.013488754
287	0.013536235
288	0.013583718
289	0.013631204
290	0.013678692
291	0.013726182
292	0.013773674
293	0.013821169
294	0.013868666
295	0.013916165

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
296	0.013963666
297	0.014011170
298	0.014058675
299	0.014106183
300	0.014153694
301	0.014201206
302	0.014248721
303	0.014296238
304	0.014343757
305	0.014391278
306	0.014438801
307	0.014486327
308	0.014533855
309	0.014581385
310	0.014628918
311	0.014676453
312	0.014723989
313	0.014771529
314	0.014819070
315	0.014866613
316	0.014914159
317	0.014961707
318	0.015009258
319	0.015056810
320	0.015104365
321	0.015151922
322	0.015199481
323	0.015247042
324	0.015294606
325	0.015342172
326	0.015389740
327	0.015437310
328	0.015484883
329	0.015532457
330	0.015580034

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
331	0.015627614
332	0.015675195
333	0.015722779
334	0.015770365
335	0.015817953
336	0.015865543
337	0.015913136
338	0.015960731
339	0.016008328
340	0.016055927
341	0.016103529
342	0.016151132
343	0.016198738
344	0.016246347
345	0.016293957
346	0.016341570
347	0.016389185
348	0.016436802
349	0.016484421
350	0.016532043
351	0.016579667
352	0.016627293
353	0.016674921
354	0.016722551
355	0.016770184
356	0.016817819
357	0.016865456
358	0.016913096
359	0.016960738
360	0.017008381
361	0.017056028
362	0.017103676
363	0.017151327
364	0.017198979
365	0.017246634

ANNUAL RATE (1.71%), COMPOUNDED DAILY	
DAYS	FACTOR
366	0.017294292
367	0.017341951
368	0.017389613
369	0.017437277
370	0.017484943
371	0.017532612

Part III

Request for Comments on Section 45W Credit for Qualified Commercial Clean Vehicles and Section 30C Alternative Fuel Vehicle Refueling Property Credit

Notice 2022-56

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance under § 45W and § 30C of the Internal Revenue Code (Code), as amended by §§ 13403 and 13404, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on the qualified commercial clean vehicles credit under § 45W (§ 45W credit) and the amendments to the alternative fuel vehicle refueling property credit under § 30C (§ 30C credit), as well as specific comments described in section 3 of this notice. Comments received in response to this notice will help to inform the development of guidance implementing §§ 45W and 30C.

SECTION 2. BACKGROUND

.01 *Section 45W, Qualified Commercial Clean Vehicles Credit*

Section 13403(a) of the IRA added new § 45W to the Code, which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033. A taxpayer can claim a § 45W credit for purchasing and placing in service a qualified commercial clean vehicle, as defined in § 45W(c), during the taxable year. The amount of the § 45W credit is the lesser of (1) 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or (2) the incremental cost of the vehicle.[1] Under § 45W(b)(4), the credit is limited to $7,500 in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and $40,000 for all other vehicles.

Section 45W(c) defines "qualified commercial clean vehicle" for purposes of the § 45W credit.[2] Section 45W(d) establishes special rules for purposes of the § 45W credit, including the application of basis reduction, domestic usage, and recapture rules similar to those under § 30D(f) of the Code and a rule disallowing a double benefit under § 45W for a taxpayer claiming a new clean vehicle credit under § 30D. Section 45W(e) provides that no § 45W credit is allowed with respect to any vehicle unless the taxpayer includes the vehicle identification number (VIN) of such vehicle on the tax return for the taxable year. Section 45W(f) grants the Secretary of the Treasury or her delegate (Secretary) authority to issue regulations or other guidance to carry out the purposes of § 45W, including regulations or other guidance relating to determination of the incremental cost of any qualified commercial clean vehicle.

.02 *Section 30C, Alternative Fuel Vehicle Refueling Property Credit*

Section 30C was originally enacted by § 1342(a) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 1049 (Aug. 8, 2005), to provide a credit for the cost of qualified alternative fuel vehicle refueling property. Section 30C has been amended several times since its enactment, most recently by § 13404 of the IRA effective with respect to qualified alternative fuel vehicle refueling property placed in service after December 31, 2022, and on or before December 31, 2032.

With respect to such qualified alternative fuel vehicle refueling property, the amount of the § 30C credit is equal to 30 percent (6 percent in the case of property of a character subject to depreciation) of the cost of such property. The § 30C credit with respect to any single item of qualified alternative fuel vehicle refueling property is limited to $100,000 in the case of any such item of property of a character subject to an allowance for depreciation, and $1,000 in any other case. For purposes of the § 30C credit, § 30C(c) defines the term "qualified alternative fuel vehicle refueling property" (1) by making certain modifications to the term "qualified clean-fuel vehicle refueling property" as defined in former § 179A of the Code (providing a deduction for clean-fuel vehicles and certain refueling property) as in effect prior to its repeal, (2) adding bidirectional charging equipment to that modified definition, and (3) requiring such property to be located in an eligible census tract, as defined in § 30C(c)(3), which is either a low-income community as described in § 45D(e) or not an urban area.[3]

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[1] Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle. Section 45W(b)(3) defines "comparable vehicle" to mean any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such vehicle.

[2] Under § 45W(c), a "qualified commercial clean vehicle" is defined as any vehicle of a character subject to the allowance for depreciation that: (1) meets the requirement under § 30D(d)(1)(C) of being made by a qualified manufacturer and is acquired for use or lease by the taxpayer and not for resale, (2) either-- (A) meets the requirement under § 30D(d)(1)(D) of being treated as a motor vehicle for purposes of title II of the Clean Air Act and is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), or (B) is mobile machinery, as defined in § 4053(8) (including vehicles that are not designed to perform a function of transporting a load over the public highways), and (3) either-- (A) is propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or (B) is a motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B) for being a new qualified fuel cell motor vehicle.

[3] Section 30(e)(6) provides that references in § 30C to § 179A are references to former § 179A as in effect immediately before its repeal by Public Law 113-295, div. A, title II, §221(a)(34)(A), 128 Stat. 4042 (December 19, 2014). Section 30C(c)(1) generally defines the term "qualified alternative fuel vehicle refueling property" to have the same meaning as the term "qualified clean-fuel vehicle refueling property" would have under former § 179A, if: (A) former § 179A(d)(1) (limiting deduction to property of a character subject to the allowance for depreciation) did not apply to property installed on property which is used as the principal residence (within the meaning of § 121 of the Code) of the taxpayer, and (B) only the following were treated as clean-burning fuels for purposes of former § 179A(d): (i) Any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen; (ii) Any mixture-- (I) which consists of two or more of the following: biodiesel (as defined in § 40A(d)(1) of the Code), diesel fuel (as defined in § 4083(a)(3) of the Code), or kerosene, and (II) at least 20 percent of the volume of which consists of biodiesel (as so defined) determined without regard to any kerosene in such mixture; (iii) Electricity; (iv) Any transportation fuel (as defined in § 45Z(d)(5) of the Code).

Section 30C(d) addresses the application of § 30C with other credits. Section 30C(e) provides special rules for purposes of § 30C. Section 30C(f) provides a special rule **for electric charging stations for certain vehicles with two or three wheels for purposes of the** § 30C credit**.** Section 30C(g)(1) provides that the amount of § 30C credit for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of a qualified alternative fuel vehicle refueling project is multiplied by 5 if certain prevailing wage and apprenticeship requirements are met.[4] **Section 30C(g)(4) grants** the Secretary authority to issue regulations or other guidance to administer the wage and apprenticeship requirements of § 30C(g), and § 30C(h) authorizes the Secretary to prescribe such regulations as necessary to carry out the provisions of § 30C.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising under § 45W and the amendments to § 30C that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 *Credit for Qualified Commercial Clean Vehicles (§ 45W)*

(1) What factors should be considered, and what data sources should be relied on, to determine whether a vehicle is "comparable in size and use" for purposes of the comparable vehicle definition in § 45W(b)(3) to determine incremental cost?

(2) What, if any, guidance is required to clarify the definition of mobile machinery for the purposes of § 45W(c)?

(3) Section 45W(d)(1) provides that rules similar to the rules under § 30D(f) without regard to the income limitations in § 30D(f)(10) or the manufacturer's suggested retail price limitations in § 30D(f)(11), apply for purposes of section 45W. The applicable rules in § 30D(f) are basis reduction, no double benefit, property used outside the United States not qualified, recapture, election not to take the credit, interaction with air quality and motor vehicle safety standards, and one credit per vehicle. What aspects of § 30D(f) should apply to the § 45W credit without modification and what aspects should be modified?

(4) Section 45W(d)(3) provides that no § 45W credit is allowed with respect to any vehicle for which a credit was allowed under § 30D. What, if any, guidance is required to ensure that the allowance of credit under § 30D precludes the allowance of a credit under § 45W for the same vehicle?

(5) The definition of qualified commercial clean vehicle in § 45W(c)(1) contains several requirements including that the vehicle be made by a qualified manufacturer as required by § 30D(d)(1)(C), as amended by the IRA. What, if any, guidance is necessary for qualified manufacturers to comply with the requirements of § 45W(c)(1)?

(6) Section 45W(c)(3)(A) requires that a qualified commercial clean vehicle must either (i) satisfy the requirements under § 30B(b)(3)(A) and (B) for being a new qualified fuel cell motor vehicle, or (ii) be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle which has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity. How should "significant extent" be defined for this purpose?

(7) Is guidance necessary to clarify the meaning of the term "property of a character subject to an allowance for depreciation" for purposes of § 45W(c)(4)?

(8) Please provide comments on any other terms in § 45W that may require definition or additional guidance.

.02 *Alternative Fuel Vehicle Refueling Property Credit (§ 30C)*

(1) Is guidance necessary to clarify the meaning of the term "property of a character subject to an allowance for depreciation" for purposes of § 30C?

(2) Section 30C(b) provides that the credit is allowed with respect to any single item of qualified alternative fuel vehicle refueling property. How should "single item" be defined for this purpose?

(3) Section 30C(c)(2) provides that property does not fail to be qualified alternative fuel vehicle refueling property solely because such property is capable of charging the battery of a motor vehicle propelled by electricity, and allows discharging electricity from such battery to an electric load external to such motor vehicle. What factors and definitions should be considered in developing guidance for qualified alternative fuel vehicle refueling property that is also bidirectional charging equipment?

(4) Section 30C(e)(3) requires qualified alternative fuel vehicle refueling property to be placed in service in an eligible census tract. What guidance, if any, is needed to clarify the definition of eligible census tract?

(5) Section 30C(e)(5) provides that recapture rules similar to the rules of former § 179A(e)(4) apply for purposes of § 30C. What aspects of §§ 30C and former 179A should apply without modification for this purpose and what aspects should be modified?

(6) Please provide comments on any other terms in, or topics related to, § 30C that may require definition or guidance.

SECTION 4. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by December 3, 2022. Consideration will be given, however, to any written comment submitted after December 3, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-56. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.

[4] These requirements are satisfied if the construction of the facility begins prior to 60 days after the Treasury Department and IRS publish guidance with respect to these requirements, or the requirements are satisfied. Similar provisions were added by the IRA to several other Code provisions. See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements. General comments pertaining to the prevailing wage and apprenticeship requirements should be submitted in response to Notice 2022-51.

gov (type IRS-2022-56 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-56, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on www.regulations.gov.

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENT

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Code, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D is published.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

Request for Comments on the Credit for Carbon Oxide Sequestration

Notice 2022-57

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance under § 45Q of the Internal Revenue Code (Code), as amended by § 13104 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on the amendments to the carbon oxide sequestration credit under § 45Q (§ 45Q credit), as well as specific questions described in section 3 of this notice. Comments received in response to this notice will help to inform the development of guidance implementing the IRA amendments to § 45Q.

SECTION 2. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765 (October 3, 2008), to provide a credit for the sequestration of carbon dioxide. Section 45Q was amended significantly by § 41119 of the Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (February 9, 2018), to apply to carbon oxides, and most recently by § 13104 of the IRA.

Generally, the IRA modifies § 45Q by adjusting credit amounts;[1] extending the deadline for beginning construction of a qualified facility from January 1, 2026 to January 1, 2033; broadening the definition of a "qualified facility" by reducing the required carbon capture thresholds; modifying the rules applicable to direct air capture (DAC) facilities and electric generating units; and providing a new election to restart the § 45Q credit period for qualified facilities at which carbon capture equipment is placed in service in an area subsequently affected by a federally declared disaster (as defined by § 165(i)(5)(A) of the Code).

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising from the IRA amendments to § 45Q that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 *Direct Air Capture*. The IRA modifies the applicable dollar amounts under § 45Q(b)(1) for purposes of § 45Q(a)(3) and (a)(4) for qualified carbon oxide captured by DAC facilities.

(1) What types of existing and emerging technologies potentially meet the definition of a DAC facility?

(2) What methodologies could taxpayers use to best determine and verify the amount of qualified carbon oxides captured by a DAC facility?

.02 *Definitions*. The IRA modifies the definition of a "qualified facility" under § 45Q(d) and related definitions under § 45Q(e).

(1) What clarifications are needed regarding key terms and requirements including original planning and design, capture design capacity, principal electric generating unit, designed annual carbon oxide production, average annual carbon oxide production, and actual versus potential electric output from an applicable electric generating unit?

(2) What clarifications are needed regarding the definition of a qualified facility under § 45Q(d)?

.03 *Records and Recordkeeping*.

(1) What factors should the Treasury Department and the IRS consider in determining how a taxpayer can demonstrate that it satisfies the original planning and design requirement under § 45Q(d)(1)(B)?

[1] Other amendments made by the IRA to § 45Q increase the credit amount if certain prevailing wage and apprenticeship requirements are satisfied. The IRA also provides an election for certain taxpayers to receive an elective payment or to transfer the credit under § 45Q. See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements and Notice 2022-50 requesting comments on the elective payment and credit transfer elections. General comments pertaining to the prevailing wage and apprenticeship requirements should be submitted in response to Notice 2022-51. General comments pertaining to elective payment and credit transferability provisions should be submitted in response to Notice 2022-50.

(2) What records or documentation do taxpayers currently maintain or could they create to substantiate the required capture amounts under § 45Q(d)(2)(B)? Could facility-level data reported to the EPA Greenhouse Gas Reporting Program (Suppliers of Carbon Dioxide source category; 40 CFR Part 98, subpart PP) be used by taxpayers to substantiate the required capture amounts?

(3) Which source or sources of information should the Treasury Department and the IRS consider in establishing the capacity factor and baseline carbon oxide production requirements under § 45Q(e)(2)?

(4) Using technology currently available to industry, how could project developers that incorporate carbon capture equipment into electric generating units demonstrate that the carbon capture equipment meets the 75 percent baseline carbon oxide requirement under § 45Q(d)(2)(B)(ii)?

(5) What records or documentation do taxpayers currently maintain or could they create to substantiate captured carbon oxide within a qualified electricity generating facility that contains multiple electric generating units?

(6) What clarifications are needed regarding the treatment of modifications to a qualified electricity generating facility that result in a significant increase or decrease in carbon oxide production and are chargeable to capital account?

.04 *Credit Reduction for Tax-Exempt Bonds*. Section 45Q(f)(8) includes a reduction for the § 45Q credit when tax-exempt bonds are used in the financing of the facility using rules similar to the rule under § 45(b)(3). What, if any, additional guidance would be helpful in determining how to calculate this reduction?

.05 *Specific Technologies*. What clarifications, if any, are needed regarding the classification of industry-specific or emerging technologies that qualify for the § 45Q credit?

.06 Please provide comments on any other topics related to § 45Q credit that may require guidance.

SECTION 4. ADDRESSES TO SEND COMMENTS

01 Written comments should be submitted by December 3, 2022. Consideration will be given, however, to any written comment submitted after December 3, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-57. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0057 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-57), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to its public docket on www.regulations.gov.

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Code, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D is published.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

Request for Comments on Credits for Clean Hydrogen and Clean Fuel Production

Notice 2022-58

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) plan to issue guidance under new § 45V and new § 45Z of the Internal Revenue Code (Code), as added to the Code by §§ 13204 and 13704, respectively, of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests general comments on the clean hydrogen production credit under § 45V of the Code (§ 45V credit) and the clean fuel production credit under § 45Z (§ 45Z credit), as well as specific comments described in section 3 of this notice. Comments received in response to this notice will help to inform the development of guidance implementing § 45V (and associated incentives for clean hydrogen production in §§ 45 and 48) and § 45Z.

SECTION 2. BACKGROUND

.01 *Credits for Clean Hydrogen*.

The § 45V credit is allowable for qualified clean hydrogen produced after 2022 at a qualified clean hydrogen production facility during the 10-year period beginning on the date the facility is originally placed in service. The § 45V credit is calculated by multiplying the applicable amount by the kilograms of qualified clean hydrogen produced based on the lifecycle greenhouse gas emissions rate that results from the production of qualified clean hydrogen. For facilities that do not meet certain prevailing wage and apprenticeship requirements, the applicable amount is determined by multiplying $0.60 per kilogram by an applicable

percentage that ranges from 20 percent to 100 percent depending on the lifecycle greenhouse gas emissions rate that results from the production of the qualified clean hydrogen. Therefore, for these facilities the applicable amount ranges from $0.12 to $0.60 per kilogram of qualified clean hydrogen produced. If the qualified clean hydrogen facility meets the prevailing wage and apprenticeship requirements, the credit amount is multiplied by five, resulting in an applicable amount that ranges from $0.60 to $3.00 per kilogram of clean hydrogen produced.[1] The applicable amount is adjusted annually for inflation.

If a lifecycle greenhouse gas emissions rate has not been determined for purposes of § 45V for hydrogen produced by a taxpayer, then the taxpayer may file a petition for the Secretary of the Treasury or her delegate (Secretary) to determine the emissions rate of the hydrogen.

Qualified clean hydrogen is defined in § 45V to include hydrogen that is produced through a process that results in a lifecycle greenhouse gas emissions rate of not greater than 4 kilograms of carbon dioxide equivalent (CO_2e) per kilogram of hydrogen. To be eligible for the § 45V credit, the qualified clean hydrogen must be produced in the United States within the meaning of § 638(1) of the Code (or a U.S. possession within the meaning of § 638(2)) in the ordinary course of the taxpayer's trade or business for sale or use. Additionally, the production and sale or use by the taxpayer must be verified by an unrelated party. A taxpayer may not claim a § 45V credit for qualified clean hydrogen produced at any facility that includes carbon capture equipment for which a credit is allowed to any taxpayer under § 45Q for the taxable year or any prior taxable year.

Section 13204(b) of the IRA amended § 45(e) relating to the credit for producing electricity from certain renewable sources (§ 45 credit) to provide a special exception to the requirement that electricity be sold to an unrelated party to be eligible for the § 45 credit. Electricity produced by a taxpayer after 2022 may be treated as sold by the taxpayer to an unrelated person during the taxable year if the electricity is used during the taxable year by the taxpayer or a related person at a qualified clean hydrogen production facility to produce qualified clean hydrogen. This production and use must be verified by an unrelated third party. Section 13204(c) of the IRA also amended § 48 relating to the energy investment tax credit (§ 48 credit) to allow a taxpayer that owns a qualified clean hydrogen production facility placed in service after December 31, 2022, to make an election to claim the § 48 credit in lieu of the § 45 credit.

.02 *Section 45Z, Clean Fuel Production Credit*.

The § 45Z credit is equal to the product of (1) the applicable amount per gallon (or gallon equivalent) with respect to any transportation fuel that is (a) produced by the taxpayer at a qualified facility, and (b) sold by the taxpayer in a manner described in § 45Z(a)(4) during the taxable year, and (2) the emissions factor for such fuel (as determined under § 45Z(b)).

Section 45Z(a)(2) defines the "applicable amount" for any transportation fuel produced at a qualified facility as (A) 20 cents in the case of a qualified facility which does not satisfy certain prevailing wage and apprenticeship requirements, or (B) $1.00 in the case of a qualified facility that satisfies such requirements.[2] Section 45Z(a)(3) provides that the amounts listed in § 45Z(a)(2) are increased to 35 cents and $1.75, respectively in the case of a transportation fuel that is sustainable aviation fuel. The applicable amounts will be adjusted annually for inflation. Section 45Z applies to transportation fuel produced and sold after December 31, 2024, and before January 1, 2028.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on questions arising under § 45V (and the associated clean hydrogen production incentives in §§ 45 and 48) and under § 45Z that should be addressed in guidance. Commenters are encouraged to specify the issues on which guidance is needed most quickly as well as the most important issues on which guidance is needed. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

.01 *Credit for Production of Clean Hydrogen*.

(1) *Clean Hydrogen*. Section 45V provides a definition of the term "qualified clean hydrogen." What, if any, guidance is needed to clarify the definition of qualified clean hydrogen?

(a) Section 45V defines "lifecycle greenhouse gas emissions" to "only include emissions through the point of production (well-to-gate)."[3] Which specific steps and emissions should be included within the well-to-gate system boundary for clean hydrogen production from various resources?

(b)(i) How should lifecycle greenhouse gas emissions be allocated to co-products from the clean hydrogen production process? For example, a clean hydrogen producer may valorize steam, electricity, elemental carbon, or oxygen produced alongside clean hydrogen.

(ii) How should emissions be allocated to the co-products (for example, system expansion, energy-based approach, mass-based approach)?

(iii) What considerations support the recommended approaches to these issues?

(c)(i) How should lifecycle greenhouse gas emissions be allocated to clean hydrogen that is a by-product of industrial

[1] The higher credit amount also applies if the construction of the facility begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the prevailing wage and apprenticeships requirements of § 45V(e)(3)(A) and (4), unless the facility is altered or repaired after that date. The IRA also provides an election for a taxpayer to receive a direct payment or to transfer the credit. Similar provisions were added by the IRA to several other Code provisions. See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements and Notice 2022-50 requesting comments on direct payment and transferability issues for general applicability to these several Code sections.

[2] These prevailing wage and apprenticeship requirements are provided in § 45Z(f)(6) and (f)(7). Similar provisions were added by the IRA to several other Code sections. See Notice 2022-51 requesting comments on prevailing wage and apprenticeship requirements. General comments pertaining to the prevailing wage and apprenticeship requirements should be submitted in response to Notice 2022-51.

[3] The well-to-gate system boundary for hydrogen production includes emissions associated with feedstock growth, gathering, and/or extraction; feedstock delivery to a hydrogen production facility; conversion of feedstock to hydrogen at a production facility; generation of electricity consumed by a hydrogen production facility (including feedstock extraction for electricity generation, feedstock delivery, and the electricity generation process itself); and sequestration of carbon dioxide generated by a hydrogen production facility.

processes, such as in chlor-alkali production or petrochemical cracking?

(ii) How is byproduct hydrogen from these processes typically handled (for example, venting, flaring, burning onsite for heat and power)?

(d) If a facility is producing qualified clean hydrogen during part of the taxable year, and also produces hydrogen that is not qualified clean hydrogen during other parts of the taxable year (for example, due to an emissions rate of greater than 4 kilograms of CO_2-e per kilogram of hydrogen), should the facility be eligible to claim the § 45V credit only for the qualified clean hydrogen it produces, or should it be restricted from claiming the § 45V credit entirely for that taxable year?

(e) How should qualified clean hydrogen production processes be required to verify the delivery of energy inputs that would be required to meet the estimated lifecycle greenhouse gas emissions rate as determined using the GREET model or other tools if used to supplement GREET?

(i) How might clean hydrogen production facilities verify the production of qualified clean hydrogen using other specific energy sources?

(ii) What granularity of time matching (that is, annual, hourly, or other) of energy inputs used in the qualified clean hydrogen production process should be required?

(2) *Alignment with the Clean Hydrogen Production Standard*. On September 22, 2022, the Department of Energy (DOE) released draft guidance for a Clean Hydrogen Production Standard (CHPS) developed to meet the requirements of § 40315 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021).[4] The CHPS draft guidance establishes a target lifecycle greenhouse gas emissions rate for clean hydrogen of no greater than 4.0 kilograms CO_2-e per kilogram of hydrogen, which is the same lifecycle greenhouse gas emissions limit required by the § 45V credit. For purposes of the § 45V credit, what should be the definition or specific boundaries of the well-to-gate analysis?

(3) *Provisional Emissions Rate*. For hydrogen production processes for which a lifecycle greenhouse gas emissions rate has not been determined for purposes of § 45V, a taxpayer may file a petition with the Secretary for determination of the lifecycle greenhouse gas emissions rate of the hydrogen the taxpayer produces.

(a) At what stage in the production process should a taxpayer be able to file such a petition for a provisional emissions rate?

(b) What criteria should be considered by the Secretary in making a determination regarding the provisional emissions rate?

(4) *Recordkeeping and Reporting*.

(a) What documentation or substantiation do taxpayers maintain or could they create to demonstrate the lifecycle greenhouse gas emissions rate resulting from a clean hydrogen production process?

(b) What technologies or methodologies should be required for monitoring the lifecycle greenhouse gas emissions rate resulting from the clean hydrogen production process?

(c) What technologies or accounting systems should be required for taxpayers to demonstrate sources of electricity supply?

(d) What procedures or standards should be required to verify the production (including lifecycle greenhouse gas emissions), sale and/or use of clean hydrogen for the § 45V credit, § 45 credit, and § 48 credit?

(e) If a taxpayer serves as both the clean hydrogen producer and the clean hydrogen user, rather than selling to an intermediary third party, what verification process should be put in place (for example, amount of clean hydrogen utilized and guarantee of emissions or use of clean electricity) to demonstrate that the production of clean hydrogen meets the requirements for the § 45V credit?

(f) Should indirect book accounting factors that reduce a taxpayer's effective greenhouse gas emissions (also known as a book and claim system), including, but not limited to, renewable energy credits, power purchase agreements, renewable thermal credits, or biogas credits be considered when calculating the § 45V credit?

(g) If indirect book accounting factors that reduce a taxpayer's effective greenhouse gas emissions, such as zero-emission credits or power purchase agreements for clean energy, are considered in calculating the § 45V credit, what considerations (such as time, location, and vintage) should be included in determining the greenhouse gas emissions rate of these book accounting factors?

(5) *Unrelated Parties*.

(a) What certifications, professional licenses, or other qualifications, if any, should be required for an unrelated party to verify the production and sale or use of clean hydrogen for the § 45V credit, § 45 credit, and § 48 credit?

(b) What criteria or procedures, if any, should the Treasury Department and the IRS establish to avoid conflicts of interest and ensure the independence and rigor of verification by unrelated parties?

(c) What existing industry standards, if any, should the Treasury Department and the IRS consider for the verification of production and sale or use of clean hydrogen for the § 45V credit, § 45 credit, and § 48 credit?

(6) *Coordinating Rules*.

(a) *Application of certain § 45 rules*.

(i) Section 45V(d)(3) includes a reduction for the § 45V credit when tax-exempt bonds are used in the financing of the facility using rules similar to the rule under § 45(b)(3)). What, if any, additional guidance would be helpful in determining how to calculate this reduction?

(ii) Section 45V(d)(1) states that the rules for facilities owned by more than one taxpayer are similar to the rules of § 45(e)(3). How should production from a qualified facility with more than one person holding an ownership interest be allocated?

(b) *Coordination with § 48*.

(i) What factors should the Treasury Department and the IRS consider when providing guidance on the key definitions and procedures that will be used to administer the election to treat clean hydrogen production facilities as energy property for purposes of the § 48 credit?

(ii) What factors should the Treasury Department and the IRS consider when providing guidance on whether a facility

[4] https://www.hydrogen.energy.gov/pdfs/clean-hydrogen-production-standard.pdf

is "designed and reasonably expected to produce qualified clean hydrogen?"

(c) *Coordination with § 45Q*. Are there any circumstances in which a single facility with multiple unrelated process trains could qualify for both the § 45V credit and the § 45Q credit notwithstanding the prohibition in § 45V(d)(2) preventing any § 45V credit with respect to any qualified clean hydrogen produced at a facility that includes carbon capture equipment for which a § 45Q credit has been allowed to any taxpayer?

(7) Please provide comments on any other topics related to § 45V credit that may require guidance.

.02 *Clean Fuel Production Credit (§ 45Z)*.

(1) *Sale Definition*.

(a) What factors should the Treasury Department and the IRS consider in determining whether an unrelated person purchases transportation fuel for use in a trade or business for purposes of § 45Z(a)(4)(B)?

(b) What factors should the Treasury Department and the IRS consider in determining whether fuel is sold at retail for purposes of § 45Z(a)(4)(C)?

(2) *Establishment of Emissions Rate for Sustainable Aviation Fuel*. Section 45Z(b)(1)(B)(iii) provides that the lifecycle greenhouse gas emissions of sustainable aviation fuel shall be determined in accordance with the Carbon Offsetting and Reduction Scheme for International Aviation or "any similar methodology which satisfies the criteria under § 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)), as in effect on the date of enactment of this section." What methodologies should the Treasury Department and IRS consider for the lifecycle greenhouse gas emissions of sustainable aviation fuel for the purposes of § 45Z(b)(1)(B)(iii)(II)?

(3) *Provisional Emissions Rates*. Section 45Z(b)(1)(D) allows the taxpayer to file a petition with the Secretary for determination of the emissions rate for a transportation fuel which has not been established.

(a) At what stage in the production process should a taxpayer be able to file a petition for a provisional emissions rate?

(b) What criteria should be considered by the Secretary to determine the provisional emissions rate?

(4) *Special Rules*. Section 45Z(f)(1) provides several requirements for a taxpayer to claim the § 45Z credit, including for sustainable aviation fuel a certification from an unrelated party demonstrating compliance with the general requirements of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) or in the case of any similar methodology, as defined in § 45Z(b)(1)(B)(iii)(II), requirements that are similar to CORSIA's requirements. With respect to this certification requirement for sustainable aviation fuel, what certification options and parties should be considered to support supply chain traceability and information transmission requirements?

(5) *Coordinating Rules*. Section 45Z(f)(4) states that under regulations prescribed by the Secretary, rules similar to the rules of § 52(d) apply in the case of estates and trusts. Section 45Z(f)(5) states that rules similar to § 45Y(g)(6) apply to patrons of agricultural cooperatives. Section 45Z(f)(6)(A) states that rules similar to the rules of § 45(b)(7) apply for the prevailing wage requirement. Section 45Z(f)(7) states that rules similar to the rules of § 45(b)(8) apply for the apprenticeship requirement. Is the application of the cross-referenced rules for purposes of the § 45Z credit adequately clear? What aspects of the cross-referenced rules should apply to the § 45Z credit without modification and what aspects should be modified?

(6) *Multiple Owners*. How should production from a qualifying facility with more than one person having an ownership interest in such facility be allocated to such persons for purposes of § 45Z(f)(2)? Should rules similar to the rules under § 45(e)(3) apply for this purpose? If so, which aspects of § 45(e)(3) should apply without modification for this purpose and which aspects should be modified?

(7) Please provide comments on any other topics related to § 45Z credit that may require guidance.

SECTION 4: SUBMISSION OF COMMENTS

.01 Written comments should be submitted by December 3, 2022. Consideration will be given, however, to any written comment submitted after December 3, 2022, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2022-58. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at *www.regulations.gov* (type IRS-2022-58 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-58), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *www.regulations.gov*.

SECTION 5. 60-DAY RULE NOT EFFECTUATED FOR THE PREVAILING WAGE AND APPRENTICESHIP REQUIREMENT

For purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Code, the publication of this notice requesting comments is not the publication of guidance with respect to the prevailing wage and apprenticeship requirements, and it is not relevant in determining whether the prevailing wage and apprenticeship requirements are satisfied under such sections. The Treasury Department and the IRS will explicitly identify when guidance with respect to the prevailing wage and apprenticeship requirements that is relevant for determining whether such requirements have been satisfied for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D is published.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

26 CFR § 601.201: Rulings and determination letters.
(Also Part I, §§ 401; 1.401(b)-1; 403(b).)

Rev. Proc. 2022-40

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PART I – OVERVIEW

SECTION 1. PURPOSE

.01 This revenue procedure modifies Rev. Proc. 2016-37, 2016-29 IRB 136,[1] which, in part, provides the circumstances under which a Plan Sponsor may submit a determination letter application to the Internal Revenue Service (IRS) with respect to a qualified individually designed plan, to permit the submission of determination letter applications for section 403(b) individually designed plans. Under this revenue procedure, a Plan Sponsor that maintains a section 403(b) individually designed plan will be permitted to submit a determination letter application for an initial plan determination, for a determination upon plan termination, and in certain other circumstances identified by the IRS in guidance published in the Internal Revenue Bulletin (IRB). The earliest date a Plan Sponsor will be permitted to submit a determination letter application for a section 403(b) individually designed plan is June 1, 2023, in accordance with section 12 of this revenue procedure.

.02 This revenue procedure also (1) incorporates modifications of Rev. Proc. 2016-37 set forth in Rev. Proc. 2019-20, 2019-20 IRB 1182, relating to the submission of determination letter applications for a determination with respect to Merged Plans, (2) clarifies and modifies the provisions of Rev. Proc. 2019-39, 2019-42 IRB 945,[2] that relate to the Remedial Amendment Period for section 403(b) individually designed plan Form Defects first occurring after June 30, 2020, (3) extends the expiration of the Remedial Amendment Period for new qualified individually

[1] For purposes of this revenue procedure, 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.

[2] For purposes of this revenue procedure, 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.

designed plans, (4) modifies the circumstances under which a plan is considered to have been issued an initial plan determination, and (5) modifies the scope of review of qualified individually designed plans submitted under the determination letter program.

.03 This revenue procedure does not modify or restate the provisions of Rev. Proc. 2016-37 relating to qualified pre-approved plans. The Department of the Treasury (Treasury Department) and the IRS anticipate updating the provisions of Rev. Proc. 2016-37 relating to qualified pre-approved plans in future guidance.[3]

SECTION 2. BACKGROUND

.01 *Qualified individually designed plans*.

(1) Section 401(b) of the Internal Revenue Code (Code) provides a remedial amendment period[4] during which a plan may be amended retroactively to comply with the Code's qualification requirements. Treas. Reg. § 1.401(b)-1 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.

(2) Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

(3) 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)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. 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 (a) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements, or (b) is integral to a qualification requirement of the Code that has been changed. For this purpose, § 1.401(b)-1(c)(1) provides that a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, 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. Under § 1.401(b)-1(c)(3), the Commissioner may impose limits and provide additional rules regarding the amendments that may be made during the remedial amendment period with respect to disqualifying provisions described in § 1.401(b)-1(b)(3).

(4) For a disqualifying provision of a new plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the date the plan is put into effect and, in the case of a plan maintained by one employer, ends on the later of (a) the due date (including extensions) for filing the employer's tax return for the taxable year in which the plan is put into effect or (b) the last day of the plan year in which the plan is put into effect. In the case of a new plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year that includes the date the plan is put into effect.

(5) For a disqualifying provision that is an amendment to an existing plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the earlier of the date the plan amendment is adopted or put into effect and, in the case of a plan maintained by one employer, ends on the later of (a) the due date (including extensions) for filing the employer's tax return for the taxable year in which the amendment is adopted or effective (whichever is later) or (b) the last day of the plan year in which the amendment is adopted or effective (whichever is later). In the case of an amendment to an existing plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the amendment is adopted or effective (whichever is later).

(6) For a disqualifying provision described in § 1.401(b)-1(b)(3), 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, unless another time is specified by the Commissioner in revenue rulings, notices, and other guidance published in the IRB, 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, the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(3) ends on the later of: (a) 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 (b) 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 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.

[3] This revenue procedure also does not address section 403(b) pre-approved plans. The Treasury Department and the IRS anticipate updating the provisions of Rev. Proc. 2019-39 relating to section 403(b) pre-approved plans in the future guidance that will update the provisions of Rev. Proc. 2016-37 relating to qualified pre-approved plans.

[4] This revenue procedure includes certain defined, capitalized terms, such as Disqualifying Provision and Form Defect. On occasion, these same words were used in prior guidance without capitalization or with a somewhat different meaning. If this revenue procedure refers to words used in prior guidance under these conditions, those words are not capitalized.

(7) Section 1.401(b)-1(f) provides that the Commissioner has discretion to extend the remedial amendment period.

(8) Rev. Proc. 2016-37 provides that, effective January 1, 2017, a sponsor of a qualified individually designed plan is permitted to submit a determination letter application only for initial plan qualification, for qualification upon plan termination, and in certain other circumstances, as set forth in guidance published in the IRB. Rev. Proc. 2016-37 also provides an extended remedial amendment period under section 401(b) for qualified individually designed plans and a system of cyclical remedial amendment periods under section 401(b) for qualified pre-approved plans.

(9) Rev. Proc. 2019-20 provides for a permanent, limited expansion of the determination letter program with respect to qualified individually designed plans. As part of this limited expansion, the IRS accepts determination letter applications for certain qualified individually designed merged plans on an ongoing basis.

(10) Rev. Proc. 2022-4, 2022-1 IRB 161, sets forth the types of advice provided by the Commissioner, Tax Exempt and Government Entities Division, Employee Plans Rulings and Agreements Office, and the procedures for requesting such advice, including procedures for issuing determination letters (a) on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans under sections 401, 403(a), 409, and 4975(e)(7), and (b) except with respect to an adopting employer of a pre-approved plan requesting a determination letter under section 12 of Rev. Proc. 2022-4, on the status for exemption of any related trusts or custodial accounts under section 501(a).

02 *Section 403(b) individually designed plans*. Rev. Proc. 2019-39 sets forth a system of recurring remedial amendment periods for correcting form defects, first occurring after June 30, 2020, in section 403(b) plans. Rev. Proc. 2019-39 defines a form defect as (1) a provision that causes a plan to fail to satisfy the section 403(b) requirements, (2) the absence of a provision that causes a plan to fail to satisfy the section 403(b) requirements, (3) a provision that is integral to a section 403(b) requirement that has been changed (either by statute, or in regulations or other guidance published in the IRB), or (4) the absence from a plan of a provision required by a change to the section 403(b) requirements (either by statute, or in regulations or other guidance published in the IRB) or integral to the change. Rev. Proc. 2019-39 also sets forth the plan amendment deadlines for correcting form defects and for adopting discretionary amendments to section 403(b) individually designed plans. Section 7 of Rev. Proc. 2019-39 sets forth a limited extension of the initial remedial amendment period for section 403(b) individually designed plans.

SECTION 3. SUMMARY OF SIGNIFICANT MODIFICATIONS

.01 This revenue procedure modifies Rev. Proc. 2016-37 to permit Plan Sponsors to submit determination letter applications for section 403(b) individually designed plans. Beginning June 1, 2023, determination letter applications for section 403(b) individually designed plans generally may be submitted for an initial plan determination, for a determination upon plan termination, and in certain other circumstances identified by the IRS in guidance published in the IRB. However, the date on which an application may first be submitted for an initial plan determination is staggered over three dates (June 1, 2023, June 1, 2024, and June 1, 2025), depending on the last digit of the Plan Sponsor's employer identification number (EIN), in accordance with the schedule set forth in section 12.01.

.02 This revenue procedure modifies the definition of form defect, as set forth in Rev. Proc. 2019-39, with respect to a provision in, or an absence of a provision from, a section 403(b) plan that is integral to a change in Section 403(b) Requirements. In addition, this revenue procedure modifies the structure of the definition of form defect, as set forth in Rev. Proc. 2019-39. See section 4.01(2).

.03 This revenue procedure incorporates the provisions of Rev. Proc. 2019-39 relating to the Remedial Amendment Period for section 403(b) individually designed plan Form Defects first occurring after June 30, 2020. See section 5.02(2).

.04 This revenue procedure extends the expiration of the Remedial Amendment Period for a Disqualifying Provision with respect to a provision of a new plan or the absence of a provision from a new plan to the last day of the second calendar year following the calendar year in which the plan is put into effect.[5] See section 5.03(1)(a).

.05 This revenue procedure extends the expiration of the Remedial Amendment Period for a Disqualifying Provision with respect to a provision of a new governmental plan within the meaning of section 414(d) or the absence of a provision from such a plan to the later of: (1) the last day of the second calendar year following the calendar year in which the plan is put into effect; or (2) 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 the end of the plan's initial plan year.[6] See section 5.03(2)(a).

.06 This revenue procedure modifies the eligibility rules for a Plan Sponsor to obtain an individual plan determination. Under the revised rules, for example, a Plan Sponsor that maintains a plan for which a determination letter has been issued as a result of filing a Form 5307 (Application for Determination for Adopters of Modified Volume Submitter Plans) is no longer ineligible to submit that plan for a determination letter for an initial plan determination on a Form 5300 (*Application for Determination for Employee Benefit Plan*).[7] See section 9.02.

[5] Section 5.05(1) of Rev. Proc. 2016-37 provides that the remedial amendment period for a disqualifying provision with respect to a provision of a new plan or the absence of a provision from a new plan is extended to the later of: (1) the 15th day of the 10th calendar month after the end of the plan's initial plan year or (2) the "modified section 401(b) expiration date," which is defined in section 5.05(1)(a) and (b) of Rev. Proc. 2016-37.

[6] Section 5.06(1) of Rev. Proc. 2016-37 provides that the remedial amendment period for a disqualifying provision with respect to a provision of a new governmental plan within the meaning of section 414(d) or the absence of a provision from such a plan is extended to the later: of (1) the date determined in section 5.05(1) of Rev. Proc. 2016-37 or (2) 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins after the end of the plan's initial plan year.

[7] Under section 4.03(1) of Rev. Proc. 2016-37, an employer that maintained a plan for which a determination letter had been issued as a result of filing a Form 5307 was not permitted to submit that plan for a determination letter for initial qualification.

.07 This revenue procedure modifies the scope of the IRS's review of individually designed plans submitted for a determination letter. Under the revised rules, the IRS generally will consider in its review Qualification Requirements and Section 403(b) Requirements that are in effect, or that have been included on a Required Amendments List, on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted. See section 10.01.

SECTION 4. DEFINITIONS

.01 *General definitions*.

(1) *Disqualifying Provision*.

(a) *In general*. For a qualified plan, the term "Disqualifying Provision" means:

(i) a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective;

(ii) a plan provision that has been designated, pursuant to § 1.401(b)-1(b)(3), by the Commissioner, in guidance published in the IRB, as a disqualifying provision by reason of a change in those requirements; or

(iii) the absence from a plan of a provision required by (or, if applicable, integral to) a change in the qualification requirements of the Code.

(b) *Designation of Disqualifying Provisions*. Pursuant to § 1.401(b)-1(b)(3), the IRS designates a plan provision as a Disqualifying Provision if it:

(i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001; or

(ii) is integral to a Disqualifying Provision described in section 4.01(1)(b)(i).

(2) *Form Defect*. For a section 403(b) plan, the term "Form Defect" means:

(a) a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the form of the section 403(b) plan to fail to satisfy the Section 403(b) Requirements applicable as of the date the plan or amendment is first made effective;

(b) a plan provision that:

(i) results in the failure of the form of the section 403(b) plan to satisfy the Section 403(b) Requirements by reason of a change in those requirements; or

(ii) is integral to a Form Defect described in section 4.01(2)(b)(i); or

(c) the absence from a plan of a provision required by (or, if applicable, integral to) a change in the Section 403(b) Requirements.

(3) *Plan Sponsor*. The term "Plan Sponsor" means an employer that sponsors a qualified individually designed plan for its employees or an eligible employer, as described in section 403(b)(1)(A), that sponsors a section 403(b) individually designed plan for its employees.

(4) *Qualification Requirements*. The term "Qualification Requirements" means the requirements of sections 401(a), 403(a), 409, and 4975(e)(7), including requirements provided in the Code, and in regulations or other guidance published in the IRB.[8]

(5) *Remedial Amendment Period*. The term "Remedial Amendment Period" means the period during which a Plan Sponsor maintaining a qualified plan or section 403(b) plan may correct Disqualifying Provisions or Form Defects in its plan retroactive to the beginning of the period. As part of the correction of a Disqualifying Provision or Form Defect within the remedial amendment period, a Plan Sponsor will be considered to have satisfied the Qualification Requirements or Section 403(b) Requirements, as applicable, if all provisions of the plan that are necessary to satisfy those requirements have been adopted and made effective in form and operation from the beginning of the remedial amendment period.

(6) *Section 403(b) Requirements*. The term "Section 403(b) Requirements" means the requirements of section 403(b), including requirements provided in the Code, and in regulations or other guidance published in the IRB.[9]

.02 *Definitions related to Merged Plans*.

(1) *Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction*. The term "Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction" means the effective date of the transaction as evidenced by a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved.

(2) *Date of the Plan Merger*. The term "Date of the Plan Merger" means the effective date of the Plan Merger as evidenced by (a) a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved, or (b) a plan amendment.

(3) *Merged Plan*. The term "Merged Plan" means a plan that results from the merger or consolidation of two or more qualified plans into a single qualified individually designed plan pursuant to a Plan Merger.

(4) *Plan Merger*. The term "Plan Merger" means a merger or consolidation, as described in § 1.414(l)-1(b)(2), that combines two or more qualified plans maintained by previously Unrelated Entities into a single individually designed plan, and that occurs in connection with a corporate merger, acquisition, or other similar business transaction among Unrelated Entities that each maintained its own plan or plans prior to the Plan Merger.

(5) *Unrelated Entities*. The term "Unrelated Entities" means entities that are not members of the same controlled group under section 414(b), the same set of trades or businesses under common control under section 414(c), or members of the same affiliated service group under section 414(m).

[8] Under this definition, a change in Qualification Requirements includes a statutory, regulatory, or other guidance change that affects a requirement of section 401(a), 403(a), 409, or 4975(e)(7), without regard to whether the change results in a Disqualifying Provision or merely permits the adoption of a discretionary amendment.

[9] Under this definition, a change in Section 403(b) Requirements includes a statutory, regulatory, or other guidance change that affects a requirement of section 403(b), without regard to whether the change results in a Form Defect or merely permits the adoption of a discretionary amendment.

PART II – INDIVIDUALLY DESIGNED QUALIFIED AND SECTION 403(b) PLANS

SECTION 5. REMEDIAL AMENDMENT PERIOD FOR INDIVIDUALLY DESIGNED QUALIFIED AND SECTION 403(b) PLANS

.01 *In general*. The provisions of this section 5 set forth the Remedial Amendment Period for (1) Disqualifying Provisions in qualified individually designed plans, and (2) Form Defects first occurring after June 30, 2020, in section 403(b) individually designed plans.[10] A plan for which a Plan Sponsor does not correct a Disqualifying Provision or Form Defect within the applicable Remedial Amendment Period will not be considered to satisfy the Qualification Requirements or Section 403(b) Requirements, as applicable.

.02 *Beginning dates of the Remedial Amendment Period*.

(1) *Disqualifying Provisions*. Section 1.401(b)-1(d)(1) sets forth the dates on which the Remedial Amendment Period begins for Disqualifying Provisions. Details regarding the beginning dates of the Remedial Amendment Period are set forth in sections 2.01(5), (6), and (7) of this revenue procedure.

(2) *Form Defects*. Unless another time is specified by the Commissioner in guidance published in the IRB, the Remedial Amendment Period for a Form Defect begins:

(a) in the case of a Form Defect with respect to a provision of, or absence of a provision from, a new plan, on the date the plan is put into effect;

(b) in the case of a Form Defect with respect to an amendment to an existing plan (other than a Form Defect that is related to a change in Section 403(b) Requirements, or that is integral to such a change, as described in paragraph (c) and (d), respectively, of this section 5.02(2)), on the date the plan amendment is adopted or put into effect, whichever is earlier;

(c) in the case of a Form Defect with respect to a provision that fails to satisfy the Section 403(b) Requirements by reason of a change in those requirements, on the date on which the change effected by an amendment to the Code or a change in requirements provided in regulations or other guidance published in the IRB became effective with respect to the plan; or

(d) in the case of a Form Defect with respect to a provision that is integral to a Section 403(b) Requirement that has been changed, on the first day on which the plan was operated in accordance with such provision, as amended.

.03 *Expiration of Remedial Amendment Period*.

(1) *Plans that are not governmental plans within the meaning of section 414(d)*. Except as otherwise provided by statute or in regulations or other guidance published in the IRB, the Remedial Amendment Period for Disqualifying Provisions and Form Defects for plans that are not governmental plans within the meaning of section 414(d) expires as follows:

(a) *New plan*. The Remedial Amendment Period for a Disqualifying Provision or Form Defect with respect to a provision of a new plan or the absence of a provision from a new plan expires on the last day of the second calendar year following the calendar year in which the plan is put into effect.

(b) *Amendment to existing plan*. The Remedial Amendment Period for a Disqualifying Provision or Form Defect with respect to an amendment to an existing plan (other than an amendment described in paragraph (c) of this section 5.03(1)) expires on the last day of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

(c) *Change in Qualification Requirements or Section 403(b) Requirements*. The Remedial Amendment Period for a Disqualifying Provision or Form Defect that arises as a result of a change in Qualification Requirements or Section 403(b) Requirements, as applicable, expires on the last day of the second calendar year that begins after the issuance of the Required Amendments List (described in section 7) on which the change in Qualification Requirements or Section 403(b) Requirements appears.

(2) *Plans that are governmental plans within the meaning of section 414(d)*. Except as otherwise provided by statute or in regulations or other guidance published in the IRB, the Remedial Amendment Period for Disqualifying Provisions and Form Defects for plans that are governmental plans within the meaning of section 414(d) expires as follows:

(a) *New plan*. The Remedial Amendment Period for a Disqualifying Provision or Form Defect with respect to a provision of a new governmental plan or the absence of a provision from a new governmental plan expires on the later of:

(i) the last day of the second calendar year following the calendar year in which the plan is put into effect; or

(ii) 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 the end of the plan's initial plan year.

(b) *Amendment to existing plan*. The Remedial Amendment Period for a Disqualifying Provision or Form Defect with respect to an amendment to an existing governmental plan (other than an amendment described in paragraph (c) of this section 5.03(2)) expires on the later of:

(i) the last day of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later; or

(ii) 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 the calendar year in which the amendment is adopted or effective, whichever is later.

(c) *Change in Qualification Requirements or Section 403(b) Requirements*. The Remedial Amendment Period for a Disqualifying Provision or Form Defect with respect to a governmental plan that arises as a result of a change in Qualification Requirements or Section 403(b) Requirements, as applicable, expires on the later of:

(i) the last day of the second calendar year that begins after the issuance of the Required Amendments List on which the

[10] For Remedial Amendment Period rules for form defects first occurring before July 1, 2020, see Rev. Proc. 2013-22, 2013-18 IRB 985, as clarified by Rev. Proc. 2017-18, 2017-5 IRB 743, and as modified by Rev. Proc. 2019-39. A Form Defect as defined in section 4.01(2) of this revenue procedure differs from the definition of a form defect first occurring before July 1, 2020.

change in Qualification Requirements or Section 403(b) Requirements appears; or

(ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date of issuance of the Required Amendments List on which the change in Qualification Requirements or Section 403(b) Requirements appears.

(3) *Terminating plans*. Notwithstanding sections 5.03(1) and 5.03(2), the termination of a plan ends the plan's Remedial Amendment Period and thus, generally will shorten the Remedial Amendment Period for the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan (that is, plan amendments required to be adopted to reflect Qualification Requirements or Section 403(b) Requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether the requirements are included on a Required Amendments List.

(4) *Circumstances in which a Disqualifying Provision or Form Defect may not be corrected retroactively during a Remedial Amendment Period*. If it is not possible to amend a plan retroactively during a Remedial Amendment Period so that all provisions of the plan that are necessary to satisfy the Qualification Requirements or Section 403(b) Requirements related to a Disqualifying Provision or Form Defect, as applicable, are made effective in operation for the whole Remedial Amendment Period, then the Disqualifying Provision or Form Defect may not be corrected retroactively even if the Plan Sponsor adopts a retroactive plan amendment that, in form, appears to satisfy those requirements. A Plan Sponsor of an individually designed qualified plan or section 403(b) plan that cannot be corrected by an amendment during the applicable Remedial Amendment Period may be able to correct the Disqualifying Provision or Form Defect under the Employee Plans Compliance Resolution System. See Rev. Proc. 2021-30, 2021-31 IRB 172, or its successors.

SECTION 6. PLAN AMENDMENT DEADLINE

.01 *Required plan amendment*. Except as otherwise provided by statute or in regulations or other guidance published in the IRB, the plan amendment deadline for (1) a Disqualifying Provision in a qualified individually designed plan, or (2) a Form Defect first occurring after June 30, 2020, in a section 403(b) individually designed plan, is the date on which the Remedial Amendment Period with respect to the Disqualifying Provision or Form Defect expires. See sections 5.03(1), (2) and (3) for the determination of the expiration of the applicable Remedial Amendment Period.

.02 *Discretionary plan amendment*. With respect to a discretionary amendment (that is, an amendment that is not made with respect to a Disqualifying Provision or Form Defect), except as otherwise provided by statute or in regulations or other guidance published in the IRB, the plan amendment deadline is the date described in paragraph (1) or (2) of this section 6.02, as applicable.

(1) *Plans that are not governmental plans within the meaning of section 414(d)*. In the case of a discretionary amendment to a plan that is not a governmental plan within the meaning of section 414(d), the plan amendment deadline is the end of the plan year in which the plan amendment is operationally put into effect. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment (rather than existing plan terms). For example, the deadline for adopting a discretionary amendment with respect to a calendar year plan that increases participants' accrued benefits and is operationally put into effect during 2023 is December 31, 2023.

(2) *Plans that are governmental plans within the meaning of section 414(d)*. In the case of a discretionary amendment to a governmental plan within the meaning of section 414(d), the plan amendment deadline is the later of:

(a) the end of the plan year in which the plan amendment is operationally put into effect; or

(b) 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment is operationally put into effect.

.03 *No relief from the requirements of section 411(d)(6)*. This revenue procedure does not provide relief from the requirements of section 411(d)(6) for any plan amendments made to a qualified plan, including plan amendments adopted as a result of changes to the Qualification Requirements.[11] Except to the extent permitted under section 411(d)(6) and the regulations thereunder, under a statutory provision, or under other guidance published in the IRB, section 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate section 411(d)(6), provided the amendment is adopted and effective before the benefits accrue.

SECTION 7. REQUIRED AMENDMENTS LIST

.01 *Required Amendments List to be published annually*. The Treasury Department and the IRS publish an annual Required Amendments List that applies to changes in Qualification Requirements and Section 403(b) Requirements. The Required Amendments List establishes the date that the Remedial Amendment Period expires for changes in Qualification Requirements and Section 403(b) Requirements set forth on the list, as described in sections 5.03(1) and 5.03(2).[12] See also section 10, which describes the scope of review by the IRS of a plan submitted for a determination letter.

[11] Section 411(d)(6) does not apply to section 403(b) plans. However, parallel rules in section 204(g) of ERISA apply to ERISA-covered section 403(b) plans.

[12] Notices setting forth the Required Amendments Lists can be found on the IRS website at https://www.irs.gov/retirement-plans/required-amendments-list. The most recent Required Amendments List is set forth in Notice 2021-64, 2021-50 IRB 869.

.02 *Items included on Required Amendments List*. In general, an item will be included on a Required Amendments List after guidance with respect to the item (including any model amendment, if applicable) has been provided in regulations or other guidance published in the IRB. However, in the discretion of the IRS, an item may be included on a Required Amendments List in other circumstances, such as when a statutory change is enacted, and it is anticipated that no guidance related to implementation of the statutory change will be issued.

SECTION 8. OPERATIONAL COMPLIANCE LIST

Although a plan may have a delayed amendment deadline to comply with a change in plan Qualification Requirements or a change in Section 403(b) Requirements, the plan must be operated in compliance with those requirements from the effective date of the change. To assist Plan Sponsors in achieving operational compliance, the IRS provides an Operational Compliance List[13] that is updated periodically to identify changes in Qualification Requirements and Section 403(b) Requirements that are effective during a calendar year. However, a plan must comply operationally with each relevant Qualification Requirement or Section 403(b) Requirement, as applicable, even if the requirement is not included on an Operational Compliance List.

SECTION 9. CIRCUMSTANCES UNDER WHICH A PLAN MAY BE SUBMITTED FOR A DETERMINATION LETTER

.01 *In general*. A Plan Sponsor of an individually designed plan may submit a determination letter application for an initial plan determination, for a determination upon plan termination, and in other circumstances, as described in sections 9.02, 9.04, and 9.06, respectively. In addition, a Plan Sponsor of a qualified individually designed plan may submit a determination letter application for a determination with respect to a Merged Plan, as described in section 9.05.

.02 *Initial plan determination*. (1) *Statement of rule*. A Plan Sponsor of an individually designed plan may submit the plan for an initial plan determination on a Form 5300 unless the plan previously had been filed for a determination letter on a Form 5300 and had been issued a determination letter as an individually designed plan. For purposes of the preceding sentence, a plan that had been issued a determination letter as an individually designed plan includes a pre-approved plan that was treated as an individually designed plan under section 8.06 of Rev. Proc. 2017-41 or section 9.05 of Rev. Proc. 2021-37, as applicable, at the time the determination letter was issued with respect to the plan.[14]

(2) *Examples*. Examples 1 through 4 address whether an initial plan determination has been made with respect to a plan.

(a) *Example 1*: *Determination letter issued with respect to individually designed plan as a result of Form 5300 filing*. Plan Sponsor A adopted Plan W, an individually designed plan, in 2017. Plan Sponsor A submitted a determination letter application on Form 5300 with respect to Plan W in 2019. A determination letter previously had not been issued with respect to Plan W. A favorable determination letter was issued with respect to Plan W in 2020. Because a determination letter was issued as a result of Plan Sponsor A's filing of a determination letter application on Form 5300 with respect to individually designed Plan W, an initial plan determination letter is considered to have been issued with respect to the plan. Accordingly, Plan Sponsor A is not eligible to submit a future determination letter application for an initial plan determination with respect to Plan W on a Form 5300.

(b) *Example 2*: *Determination letter issued with respect to pre-approved plan as a result of Form 5307 filing*. Plan Sponsor B adopted Plan X, an individually designed plan, in 2015. In 2017, Plan Sponsor B amended Plan X by adopting a pre-approved plan. A determination letter had not been issued with respect to Plan X while the plan was individually designed; however, in 2017, after amending the plan to become a pre-approved plan, Plan Sponsor B submitted a determination letter application for the plan on a Form 5307 and received a favorable determination letter. Because the determination letter issued with respect to Plan X was issued as a result of Plan Sponsor B's filing of a determination letter application on Form 5307 with respect to a pre-approved plan, an initial plan determination is not considered to have been issued with respect to Plan X. Accordingly, Plan Sponsor B is eligible to submit a future determination letter application for an initial plan determination with respect to Plan X on a Form 5300.

(c) *Example 3*: *Determination letter issued with respect to pre-approved plan as a result of leased employee determination*. Plan Y is a nonstandardized qualified defined contribution pre-approved plan. Plan Sponsor C has continuously administered Plan Y as a pre-approved plan from the date of its establishment in 2005. A determination letter previously has not been issued with respect to Plan Y. Plan Sponsor C is otherwise eligible to submit a determination letter application. In 2022, Plan Sponsor C submitted a determination letter application and included a request for a ruling on the status of leased employees with respect to Plan Y. As required by sections 12.03(3)(a) and 17.03 of Rev. Proc. 2022-4 (updated annually), Plan Sponsor C submitted the application on a Form 5300. Because Plan Y is a pre-approved plan, even though a determination letter was issued as a result of Plan Sponsor C's filing of a determination letter application on Form 5300, an initial plan determination letter is not considered to have been issued with respect to Plan Y. Accordingly, Plan Sponsor C is eligible to submit a future determination letter application for an initial plan determination with respect to Plan Y on a Form 5300.

(d) *Example 4*: *Determination letter issued with respect to pre-approved plan treated as individually designed plan*. Plan Sponsor D adopted Plan Z, a nonstandardized qualified defined contribution pre-approved plan, in 2019. In 2021, Plan Sponsor D made several amendments to Plan Z and submitted a determination letter application on Form 5307 with respect to the plan, consistent with the requirements of Rev. Proc. 2017-41. In connection with its review of Plan Z, the IRS informed Plan Sponsor D that (1) due to the nature and extent of the amendments made to the plan, Plan Z would, pursuant to section 8.06 of Rev. Proc. 2017-41, be considered an individually designed plan, and (2) in order to request a determination letter with respect to the plan, Plan Sponsor D would need to file a Form 5300. Accordingly, Plan Sponsor D resubmitted Plan Z as an individually designed plan and requested a determination letter on a Form 5300. A favorable determination letter was issued with respect to the plan. Because Plan Z was considered an individually designed plan when a determination letter was issued with respect to the plan, the determination letter is considered an initial plan determination. Accordingly, Plan Sponsor D is not eligible to submit a future determination letter application for an initial plan determination with respect to Plan Z on a Form 5300.

.03 *Timing of submission for section 403(b) plan initial plan determination*. A Plan Sponsor that is eligible to submit a section 403(b) individually designed plan for an initial plan determination on a Form 5300 must submit the determination letter application in accordance with the schedule set forth in section 12.01.

[13] The Operational Compliance List can be found on the IRS website at https://www.irs.gov/retirement-plans/operational-compliance-list.

[14] Rev. Proc. 2017-41 sets forth the procedures for issuing opinion letters regarding the qualification in form of pre-approved plans under sections 401, 403(a), and 4975. Rev. Proc. 2021-37 sets forth the procedures for issuing opinion letters regarding the satisfaction in form of section 403(b) pre-approved plans with respect to the Section 403(b) Requirements. The Treasury Department and the IRS anticipate updating these revenue procedures in future guidance.

.04 *Determination upon plan termination*. A Plan Sponsor of an individually designed plan may submit a determination letter application for a determination upon plan termination on a Form 5310 (*Application for Determination for Terminating Plan*) if the application is filed in connection with plan termination. An application is deemed to be filed in connection with plan termination if it is filed no later than the later of:

(1) one year from the effective date of the termination, or

(2) one year from the date on which the action terminating the plan is taken.

However, in no event may the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the plan termination.

.05 *Merged Plans*. A Plan Sponsor of a qualified individually designed plan may submit a determination letter application for a determination with respect to a Merged Plan on a Form 5300 if the following requirements are satisfied:[15]

(1) The Date of the Plan Merger occurs no later than the last day of the first plan year that begins after the plan year that includes the Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction between Unrelated Entities, and

(2) A determination letter application for the Merged Plan is submitted within the Merged Plan submission period. The Merged Plan submission period is the period beginning on the Date of the Plan Merger and ending on the last day of the first plan year of the Merged Plan that begins after the Date of the Plan Merger.[16]

.06 *Other circumstances*. Consideration will be given annually to whether a Plan Sponsor may submit a determination letter application in specified circumstances other than for an initial plan determination, for a determination upon plan termination, and, in the case of qualified plans, for a determination with respect to Merged Plans. Circumstances that will be considered when evaluating whether to accept determination letter applications for certain amended plans or types of amendments in plans in certain future years, include, for example, significant law changes, new approaches to plan design, and the inability of certain types of plans to convert to pre-approved plan documents. In addition, the IRS's current case load and resources available to process determination letter applications will be significant factors in deciding if and when to consider certain amended plans or types of amendments in plans under the determination letter program. Taking into account comments already received and based on an analysis of the factors listed in this section 9.06, including the IRS's current resources and case load, the IRS, during calendar year 2023, will accept determination letter applications only for individually designed qualified and section 403(b) plans for an initial plan determination and for a determination upon plan termination, and, with respect to qualified plans, for a determination with respect to individually designed Merged Plans. In section 16, the Treasury Department and the IRS request comments on the additional situations in which the submission of a determination letter application may be appropriate. The Treasury Department and the IRS intend to request, on a periodic basis, additional comments relating to the expansion of the determination letter program. Additional situations in which Plan Sponsors will be permitted to request determination letters will be announced in guidance published in the IRB.

SECTION 10. SCOPE OF PLAN REVIEW

.01 *Ongoing plans*. (1) *Changes in Qualification Requirements or Section 403(b) Requirements that have been or will be included on a Required Amendments List*. Except as otherwise provided in section 10.01(3), with respect to ongoing plans, the IRS will consider, in reviewing changes in Qualification Requirements and Section 403(b) Requirements that have been or will be included on a Required Amendments List, only those changes that appear on a Required Amendments List issued on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted.[17]

(2) *Qualification Requirements or Section 403(b) Requirements that have not been and will not be included on a Required Amendments List*. Except as otherwise provided in section 10.01(3), with respect to ongoing plans, the IRS will consider, in reviewing Qualification Requirements and Section 403(b) Requirements that have not been and will not be included on a Required Amendments List, only those Qualification Requirements and Section 403(b) Requirements that are in effect on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted.[18]

(3) *Exceptions provided in annual revenue procedure*. Any exceptions to section 10.01(1) and (2) will be provided in the annual revenue procedure that sets forth the instructions for requesting determination letters from Employee Plans Rulings and Agreements (annual revenue procedure) that applies with respect to the year in which the determination letter application is submitted.[19]

(4) *Examples*. Examples 1 through 5 illustrate the IRS's scope of plan review.

(a) *Example 1*: *Change in Qualification Requirements that is included on a Required Amendments List*. Plan Sponsor A maintains Plan X, an ongoing qualified individually designed plan. During 2024, Law L is enacted and included on the 2024 Required Amendments List. Plan Sponsor A is eligible to submit a determination letter for Plan X pursuant to section 9.02 and submits a determination letter application with respect to Plan X during the 2026 calendar year. The IRS will consider Law L in its review of Plan X because Law L was included on

[15] See section 8 of Rev. Proc. 2019-20 for a special sanction structure applicable to Merged Plans.

[16] See section 6 of Rev. Proc. 2019-20, which provides an extended remedial amendment period applicable to Merged Plans submitted during the Merged Plan submission period.

[17] Generally, the Required Amendments List includes changes in Qualification Requirements and Section 403(b) Requirements that result in Disqualifying Provisions and Form Defects, respectively. See, for example, Part III of Notice 2021-64, for a description of the content of the Required Amendments List.

[18] For a list of the most recent changes in Qualification Requirements and Section 403(b) Requirements, see the Operational Compliance List. With respect to qualified plans, see the Cumulative Lists for years beginning on or after 2005. Notices setting forth the Cumulative Lists can be found on the IRS website at Cumulative List of Changes in Retirement Plan Qualification Requirements | Internal Revenue Service (irs.gov). With respect to section 403(b) plans for years prior to 2016, see §§ 1.403(b)-1 through -11 and the requirements on the Cumulative Lists that are also applicable to section 403(b) plans.

[19] Rev. Proc. 2022-4 is the annual revenue procedure for 2022.

the 2024 Required Amendments List (a Required Amendments List issued on or before the last day of the second calendar year preceding the year in which the determination letter application is submitted).

(b) *Example 2*: *Change in Qualification Requirements that has not yet been included on a Required Amendments List*. The facts are the same as in *Example 1*, except that, during 2024, Law M also is enacted. Although Law M is a law that will be included on a Required Amendments List, Law M has not been included on a Required Amendments List as of December 31, 2024, because guidance has yet to be issued with respect to Law M. During 2024, Plan Sponsor A adopts an amendment that reflects Law M. Even though Plan Sponsor A adopted an amendment to reflect Law M, the IRS will not consider Law M in its review of Plan X because Law M was not included on a Required Amendments List that was issued on or before December 31, 2024 (the last day of the second calendar year preceding the year in which the determination letter application is submitted).

(c) *Example 3*: *Change in Qualification Requirements that is included on a Required Amendments List after IRS review cutoff date*. The facts are the same as in *Example 1*, except that, during 2025, Law N also is enacted. Law N is included on the 2025 Required Amendments List. During 2025, Plan Sponsor A adopts an amendment that reflects Law N. Even though Law N is included on a Required Amendments List and Plan Sponsor A adopted an amendment to reflect Law N, the IRS will not consider Law N in its review of Plan X because Law N was not included on a Required Amendments List that was issued on or before December 31, 2024 (the last day of the second calendar year preceding the year in which the determination letter application is submitted).

(d) *Example 4*: *Scope-of-review exception set forth in annual revenue procedure*. The facts are the same as in *Example 3*, except that, pursuant to section 10.01(3), the IRS sets forth an exception to the general rule by providing in Rev. Proc. 2026-4 that it will consider Law N in its review of plans submitted for a determination letter during 2026. As a result, even though Law N would require an amendment be made to the plan but generally would not be considered by the IRS in its review of a plan submitted during 2026 because Law N was not included on a Required Amendments List issued on or before December 31, 2024 (the last day of the second calendar year preceding the year in which the determination letter application is submitted), the IRS will consider Law N in its review of Plan X.

(e) *Example 5*: *Change in Qualification Requirements that is not included on a Required Amendments List and is effective after IRS review cutoff date*. The facts are the same as in *Example 1*, except that, during 2025, Law O also is enacted and is in effect as of January 1 of that year. Law O would not appear on a Required Amendments List because it is a new discretionary provision. During 2025, Plan Sponsor A adopts a discretionary amendment that reflects Law O. Even though Plan Sponsor A adopted a discretionary amendment to reflect Law O, the IRS will not consider Law O in its review of Plan X because Law O is effective after December 31, 2024 (the last day of the second calendar year preceding the year in which the determination letter application is submitted).

.02 *Terminating plans*. Terminating plans will be reviewed for amendments required to be adopted in connection with plan termination (see section 5.03(3)).

.03 *Plan restatement*. An individually designed plan generally must be restated, at the time the determination letter application is submitted, to incorporate all previously adopted amendments. However, a terminating plan need not be restated.

.04 *A determination letter does not consider issues under Title I of ERISA*. A determination letter issued under this revenue procedure will not address issues under Title I of ERISA. See section 11 for details regarding a Plan Sponsor's reliance on a determination letter.

.05 *Section 403(b) plans for which a determination letter will not be issued*. A determination letter will not be issued for the following section 403(b) individually designed plans:

(1) a TEFRA church defined benefit plan (see § 1.403(b)-10(f)(2)); or

(2) a plan grandfathered under Rev. Rul. 82-102, 1982-1 CB 62.

.06 *A determination letter does not consider issues related to a section 403(b) plan's coverage of multiple employers that are not in a single controlled group*. For a section 403(b) plan that is not a governmental plan within the meaning of section 414(d), a determination letter does not express an opinion, and may not be relied upon, with respect to whether the plan meets any requirements that apply due to a plan's coverage of multiple employers that are not in a single controlled group for purposes of section 414(b), (c), (m), or (o) and the regulations thereunder. For a section 403(b) plan that is a governmental plan within the meaning of section 414(d), a determination letter does not express an opinion, and may not be relied upon, with respect to whether the plan meets any requirements that apply due to a plan's coverage of multiple employers that are not aggregated in a single controlled group in a manner consistent with Notice 89-23, 1989-1 CB 654.

SECTION 11. RELIANCE ON DETERMINATION LETTERS

Section 23 of Rev. Proc. 2022-4 (updated annually) discusses reliance on a determination letter, including the effect of subsequent amendments made to the plan. For example, under section 23.04 (and under a future annual revenue procedure with respect to section 403(b) plans), in general, a Plan Sponsor that maintains an individually designed qualified plan or section 403(b) plan for which a favorable determination letter has been issued and that is otherwise entitled to rely on the determination letter may not continue to rely on the determination letter with respect to a plan provision that is subsequently amended (including any other plan provision that may be affected by the amended provision) or that is subsequently affected by a change in Qualification Requirements or Section 403(b) Requirements. However, a Plan Sponsor may continue to rely on a determination letter with respect to plan provisions that are not amended (or affected by an amendment) and plan provisions that are not affected by a change in Qualification Requirements or Section 403(b) Requirements. In addition, a Plan Sponsor that adopts a sample or model amendment issued by the IRS on a word-for-word basis (or adopts an amendment that is substantially similar to a sample or model amendment in all material respects) may continue to rely on a previously issued determination letter.

SECTION 12. TIMING OF SUBMISSION OF DETERMINATION LETTER APPLICATIONS FOR SECTION 403(b) PLANS

.01 *Initial plan determination*. A Plan Sponsor may submit a section 403(b) individually designed plan for an initial plan determination on or after the submission date applicable with respect to the Plan Sponsor's EIN as provided in the schedule set forth in this section 12.01. Thus, for example, a Plan Sponsor with an EIN ending in 3 may submit a determination letter application on June 1, 2023, or any later date.

If the EIN of the Plan Sponsor ends in:	A determination letter application may be submitted beginning on:
1, 2, or 3	June 1, 2023
4, 5, 6, or 7	June 1, 2024
8, 9, or 0	June 1, 2025

.02 *Determination upon plan termination*. Beginning on or after June 1, 2023, a Plan Sponsor may submit a section 403(b) individually designed plan for a determination upon plan termination (without regard to the schedule in section 12.01).

SECTION 13. SPECIAL NOTICE AND DISCLOSURE REQUIREMENTS FOR SECTION 403(b) PLANS

.01 *Notice to interested persons*. Under this revenue procedure, notice that an application for an advance determination regarding whether the form of a section 403(b) plan satisfies the Section 403(b) Requirements must be given to all interested persons in a manner described in the annual revenue procedure for the year in which a determination letter application is filed.[20]

.02 *Disclosure requirements*. The requirements of section 6110, relating to the public inspection of written determinations, apply to determination letter applications submitted under this revenue procedure for section 403(b) individually designed plans.[21] See the annual revenue procedure applicable for the year in which a determination letter is filed for disclosure requirements applicable to section 403(b) individually designed plans.

PART III – EFFECT ON OTHER DOCUMENTS, EFFECTIVE DATE, PUBLIC COMMENTS, DRAFTING INFORMATION

SECTION 14. EFFECT ON OTHER DOCUMENTS

.01 Parts I, II, and IV of Rev. Proc. 2016-37 are clarified, modified, and superseded.

.02 The last sentence of section 8.04 of Rev. Proc. 2017-41 is modified.

.03 Sections 5, 6, 8, and 9 of Rev. Proc. 2019-39 are clarified, modified, and superseded.

.04 Section 5 of Rev. Proc. 2019-20 is superseded.

SECTION 15. EFFECTIVE DATE

This revenue procedure is effective November 7, 2022.

SECTION 16. PUBLIC COMMENTS

Comments are requested on specific types of plans for which the Treasury Department and the IRS should consider accepting determination letter applications in circumstances other than for an initial plan determination, for a determination upon plan termination, and for a determination with respect to Merged Plans. As provided in section 9.06, circumstances for consideration include, for example, significant law changes, new approaches to plan design, and the inability of certain types of plans to convert to pre-approved plan documents. Comments that suggest expanding the scope of the program for a particular type of plan should not merely state the type of plan, but should also specify the issues applicable to that type of plan that would justify review of that particular plan type under the determination letter program. Such issues may include specific plan features and special plan designs applicable to that type of plan, or unresolved questions with respect to whether that type of plan satisfies the Qualification Requirements or Section 403(b) Requirements, as applicable, in form. Comments should be submitted in writing by February 28, 2023, and should include a reference to Rev. Proc. 2022-40. Comments may be submitted in one of two ways: (1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS Revenue Procedure 2022-40 in the search field on the Regulations.gov home page to find this revenue procedure and submit comments); or (2) By mail to: the Internal Revenue Service, Attn: CC:PA:LPD:PR (Rev. Proc. 2022-40), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Robin Joecken of Employee Plans at (513) 975-6365 (not a toll-free number).

[20] Under section 7476, notice that an application for an advance determination regarding whether the form of a qualified plan satisfies the Qualification Requirements must be given to all interested parties. Section 7476 does not apply to section 403(b) plans. See the annual revenue procedure for the year in which a determination letter is filed for a more detailed description of the notice to interested parties and notice to interested persons requirements. The notice to interested persons requirement for section 403(b) plans will appear in a future annual revenue procedure.

[21] The public inspection requirements of section 6104 apply only to determination letter applications submitted for qualified plans. Section 6104(a)(1)(B) provides that any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a) or 403(a) shall be open to public inspection at such times and in such places as the Secretary may prescribe.

Part IV

Correction to Notice 2022-41

Announcement 2022-22

Notice 2022-41, 2022-43 I.R.B. 304 (Oct. 24, 2022), contains a typographical error in the first sentence of the "GUIDANCE" section on page 306. The sentence refers to a non-calendar year cafeteria plan allowing an employee to revoke an election but should instead refer to any cafeteria plan. The sentence is amended to delete "non-calendar year." The sentence now reads, in part, as follows:

> In addition to the situations described in Notice 2014-55, a cafeteria plan may allow an employee to revoke prospectively an election of family coverage under a group health plan that is not a health FSA and that provides minimum essential coverage (as defined in section 5000A(f)(1)) provided the following conditions are satisfied:
>
> . . . .

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletin 2022–47

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[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]

Bulletin 2022–47

[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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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.