INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–44
October 28, 2024

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.

ADMINISTRATIVE

Rev. Proc. 2024-33, page 1030.

General Rules and Specifications for Substitute Forms and Schedules

This procedure provides guidelines and general requirements for the development, printing, and approval of the 2024 substitute tax forms. This procedure will be reproduced as the next revision of Publication 1167. Rev. Proc. 2023-28 is superseded.

ADMINISTRATIVE, EXEMPT ORGANIZATIONS, INCOME TAX

REG-113628-21, page 1074.

This document contains proposed regulations regarding the Federal tax classification of entities wholly owned by Indian Tribal governments (Tribes). The proposed regulations would provide that entities that are wholly owned by Tribes and organized or incorporated exclusively under the laws of the Tribes that own them generally are not recognized as separate entities for Federal tax purposes. The proposed regulations would also provide that, for purposes of making certain elective payment elections (including determining eligibility for and the consequences of such elections) for certain energy credits under the Inflation Reduction Act of 2022, these entities and certain Tribal corporations chartered by the Department of the Interior (DOI) are treated as an instrumentality of one or more Indian Tribal governments or subdivisions thereof. This document also requests comments and provides notice of a public hearing on the proposed regulations that will be in addition to Tribal consultation on the proposed regulations.

EMPLOYEE PLANS

Notice 2024-75, page 1026.

This notice expands the list of preventive care benefits permitted to be provided by a high deductible health plan (HDHP) under section 223(c)(2)(C) of the Internal Revenue Code without a deductible, or with a deductible below the applicable minimum deductible for the HDHP, to include over-the-counter oral contraceptives (including emergency contraceptives) and male condoms. This notice also clarifies that (1) all types of breast cancer screening for individuals who have not been diagnosed with breast cancer are treated as preventive care under section 223(c)(2)(C), (2) continuous glucose monitors for individuals diagnosed with diabetes are generally treated as preventive care under section 223(c)(2)(C), and (3) the new safe harbor for absence of a deductible for certain insulin products in section 223(c)(2)(G) applies without regard to whether the insulin product is prescribed to treat an individual diagnosed with diabetes or prescribed for the purpose of preventing the exacerbation of diabetes or the development of a secondary condition.

EXEMPT ORGANIZATIONS

Announcement 2024-36, page 1073.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are nolonger deductible under IRC 170(b)(1)(A).

INCOME TAX

Notice 2024-71, page 1026.

This notice provides a safe harbor under section 213 of the Internal Revenue Code for amounts paid for condoms.

T.D. 9994, page 1014.

This document contains final regulations that terminate the continued application of certain tax provisions arising from a previous transfer of intangible property to a foreign corporation when the intangible property is repatriated to certain United States persons. The final regulations affect certain United States persons that previously transferred intangible property to a foreign corporation.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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Part I

Sections 1.367(a)-1, 1.367(d)-1, 1.367(d)-1T, 1.367(e)-2, 1.904-4, 1.951A-2, 1.951A-7, and 1.6038B-1

T.D. 9994

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Section 367(d) Rules for Certain Repatriations of Intangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that terminate the continued application of certain tax provisions arising from a previous transfer of intangible property to a foreign corporation when the intangible property is repatriated to certain United States persons. The final regulations affect certain United States persons that previously transferred intangible property to a foreign corporation.

DATES: *Effective date*: These regulations are effective on October 10, 2024.

Applicability date: For dates of applicability, *see* §§1.367(d)-1(j)(2), 1.904-(q)(3), 1.951A-7(e), and 1.6038B-1(g)(8).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations other than §1.904-4, Brittany N. Dobi (202) 317-6937; concerning §1.904-4, Jeffrey L. Parry, (202) 317-6936 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This document contains final additions and amendments to 26 CFR part 1 (final regulations) under section 367(d) of the Internal Revenue Code (Code) regarding the termination of the continued application of certain tax provisions arising from a previous transfer of intangible property to a foreign corporation when the intangible property is repatriated to certain United States persons. The primary provisions of the final regulations are issued pursuant to the express delegations of authority to the Secretary of the Treasury (or her delegate) provided under sections 367(d) and 6038B. The provisions of the final regulations related to foreign branch income are issued pursuant to the express delegations of authority provided under sections 904(d)(2)(J) and (d)(7). The final regulations are also issued under the express delegation of authority under section 7805(a).

Background

On May 3, 2023, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-124064-19) in the **Federal Register** (88 FR 27819) under section 367 (the proposed regulations). The proposed regulations were intended to address simple, common fact patterns involving repatriations of intangible property by terminating the continued application of section 367(d) when a transferee foreign corporation repatriates intangible property subject to section 367(d) to a qualified domestic person when certain reporting requirements are satisfied. The proposed regulations also included a rule coordinating the application of section 367(d) and the provisions in §1.904-4(f)(2)(vi)(D) that apply the principles of section 367(d) to determine the appropriate amount of gross income attributable to a foreign branch. A "repatriation" denotes a subsequent transfer of intangible property to the U.S. transferor or a United States person (U.S. person) related to the U.S. transferor.

Summary of Comments and Explanation of Revisions

I. *In General*

Five comments were submitted on the proposed regulations, which are available at *https://www.regulations.gov* or upon request. No public hearing on the proposed regulations was requested or held.

This Summary of Comments and Explanation of Revisions describes those comments and the revisions made in response to those comments. The comments also made various requests for future guidance, which the Treasury Department and the IRS will consider as part of a potential future rulemaking addressing, among other things, general issues under section 367(d).

II. *Definition of Qualified Domestic Person*

A. In general

To terminate the continued application of section 367(d) upon a repatriation of intangible property, the proposed regulations required the recipient of the intangible property to be a qualified domestic person. The proposed regulations defined a qualified domestic person by reference to an "initial U.S. transferor," a "qualified successor," or a U.S. person that is either an individual or "qualified corporation" related to either the initial U.S. transferor or qualified successor. *See* proposed §1.367(d)-1(f)(4)(iii).

As the preamble to the proposed regulations explained in part I.C of the Explanation of Provisions, the definition of qualified domestic person was based on the principle that it is generally appropriate to terminate the continued application of section 367(d) only when all the income produced by the intangible property during its useful life, and all gain recognized on a disposition of the intangible property, will be subject to current tax in the United States as to the qualified domestic person while that person holds the property. *See* 88 FR 27819, 27824. The proposed regulations further described how, in the case of a repatriation to an initial U.S. transferor, the repatriation restored the circumstances that existed at the time of the original section 367(d) transfer. *See Id*.

B. Partnerships

The proposed regulations neither treated a domestic partnership as a qual-

ified domestic person, nor adopted an approach that would treat a partnership as an aggregate of its partners (aggregate approach) for purposes of determining qualified domestic person status. One comment suggested that the Treasury Department and the IRS modify the definition of qualified domestic person to include partnerships in which all of the partners in the partnership would themselves be qualified domestic persons, or partnerships that made the original outbound transfer of the intangible property subject to section 367(d) when there is substantial continuity of ownership of that partnership during the period beginning on the date of the initial section 367(d) transfer and ending on the date of the repatriation of the intangible property. As part of the modification, the comment also described various approaches for addressing the concerns identified in the proposed regulations regarding, for example, the potential for post-repatriation changes to partnership allocations or liquidation rights to frustrate the purposes of the proposed regulations if a partnership, or a partner in the partnership, were permitted as a qualified domestic person in certain cases. *See* 88 FR 27819, 27824 for a discussion of those concerns. Specifically, the comment suggested that the final regulations, in adopting the modification, could limit its application by requiring a specific period after the repatriation during which the ownership or interests in the partnership could not change. Additionally, the comment suggested that, to provide flexibility while protecting against the concerns outlined in the proposed regulations, the final regulations could allow the Commissioner to exercise discretion at a taxpayer's request to determine that a post-distribution change in the ownership of the partnership, or in the economic rights of the partners with respect to the intangible property, would not taint the partnership's status as a qualified domestic person. Finally, the comment also described more general, long-standing issues under section 367(d) related to the treatment of partnerships within the section 367(d) regime, and ultimately suggested that resolution of those issues should not impede finalizing the proposed regulations.

The final regulations do not adopt this comment and therefore adopt the definition of qualified domestic person from the proposed regulations without change. The issues identified by the comment, along with potential solutions to those issues, were acknowledged in the preamble to the proposed regulations, and the Treasury Department and the IRS have determined that the approach outlined in the proposed regulations continues to strike the appropriate balance between implementing the general purpose and scope of the proposed regulations (ensuring that only appropriate repatriations terminate the continued application of section 367(d)) and concerns regarding administrability and compliance. The solutions described in the comment, like the alternatives described in the proposed regulations, would not achieve this balance because the solutions would either expand the scope of the proposed regulations in an inappropriate manner (that is, by expanding the basic principle upon which the proposed regulations rests), or the solutions would, given the relatively narrow scope of the proposed regulations, impose an undue burden on taxpayers and the IRS. *See* 88 FR 27819, 27824 (describing, with respect to the latter, an approach modeled off of the rules in §§1.367(a)-3 and 1.367(a)-8 regarding gain recognition agreements and noting that approach would be "unworkable due to the compliance and administrative burden.").

Another comment described general, long-standing issues under section 367(d) related to the treatment of partnerships. These issues were generally identified in the proposed regulations. *See id*. For example, the comment pointed to §§1.367(a)-1T(c)(3)(i) and 1.367(d)-1T(a), which apply an aggregate approach upon an initial outbound transfer. The comment did not include any explicit suggestion for change regarding the proposed regulations, but the Treasury Department and the IRS may consider these issues as part of future rulemaking.

C. S corporations

As described in part I.A of this Summary of Comments and Explanation of Revisions, the proposed regulations limited qualified domestic person status to "qualified corporations" in the case of a qualified successor or in the case of a U.S. person related to either the initial U.S. transferor or qualified successor. *See* proposed §1.367(d)-1(f)(4)(iii). A qualified corporation, in relevant part, did not include an S corporation (as defined in section 1361(a)). *See Id*.

One comment suggested that the final regulations allow S corporations as qualified corporations. The comment noted that the shareholders of an S corporation must generally be U.S. individuals subject to U.S. taxation, which ensures that income attributable to intangible property held by an S corporation would be subject to U.S. taxation (though the comment noted that the limitation is not absolute, as certain plans described in section 401(a) may be shareholders of an S corporation).

Section 512(e)(3) excludes a non-individual shareholder that is an employee stock ownership plan (ESOP) (as defined in section 4975(e)(7) from the scope of section 512(e)(1), which provides that, in the case of certain non-individual shareholders of the S corporation, any item of income, gain, loss, or deduction, and any gain or loss on the disposition of stock in the S corporation, is taken into account by such non-individual shareholders as unrelated business taxable income (UBTI). As a result, the pro rata share of an S corporation's items of income taken into account by an ESOP shareholder is not subject to current taxation as UBTI. As noted in part I.A of this Summary of Comments and Explanation of Revisions, a principle for the definition of qualified domestic person is that termination of the continued application of section 367(d) should occur only when all the income produced by the intangible property, as well as gain recognized on a disposition of the intangible property, is subject to current tax in the United States. In the case of an S corporation, that result is not guaranteed.

The final regulations, therefore, do not adopt this comment and retain the definition of qualified domestic person from the proposed regulations without change. The Treasury Department and the IRS considered alternative approaches to address this comment – such as an aggregate approach, with prohibitions applicable to S corporation shareholders that are ESOPs – but determined that such approaches were effectively unworkable due to the compliance and administrative burden discussed

in part II.B of this Summary of Comment and Explanation of Revisions in connection with the comment on partnerships.

III. *Qualified Domestic Person's Adjusted Basis in Repatriated Intangible Property*

Proposed §1.367(d)-1(f)(4)(iv) provided rules regarding a qualified domestic person's adjusted basis in the intangible property it receives in a repatriation. The proposed regulations described how these rules were intended to achieve an appropriate result regarding a qualified domestic person's adjusted basis in intangible property upon a repatriation, but that general rules regarding adjusted basis under section 367(d) (and not in the context of a repatriation of intangible property to a qualified domestic person) would be addressed in future rulemaking. *See* 88 FR 27819, 27824, and 27825.

One comment described how existing uncertainty regarding the treatment of adjusted basis of intangible property subject to section 367(d) may be implicated when that intangible property is repatriated. The comment noted that any solution would necessarily represent a broad solution to existing section 367(d) issues, instead of one limited to the proposed regulations, so the comment recommended the Treasury Department and the IRS address this issue in future rulemaking. Another comment suggested that, when a transferee foreign corporation incurs expenditures with respect to repatriated intangible property after the initial outbound transfer, proposed §1.367(d)-1(f)(4)(iv) should be modified to allow a qualified domestic person's adjusted basis in repatriated intangible property to reflect those expenditures, reduced by any attributable amortization allowed or allowable to the transferee foreign corporation.

As noted in the proposed regulations, proposed §1.367(d)-1(f)(4)(iv) operated "in a manner intended to reach an appropriate result regarding a qualified domestic person's basis in repatriated intangible property" until future rulemaking is issued that can address general basis rules under section 367(d). *See id*. The Treasury Department and the IRS, in agreement with the first comment, continue to believe that any resolution of these issues necessarily implicates broader issues under section 367(d) and, as such, is beyond the scope of this rulemaking. Proposed §1.367(d)-1(f)(4)(iv) is therefore finalized without change, though the Treasury Department and the IRS may revisit these issues as part of future rulemaking.

IV. *Required Adjustments Related to an Annual Section 367(d) Inclusion*

The proposed regulations provided that the deemed annual payment under section 367(d) by the transferee foreign corporation is treated as an allowable deduction that must be allocated and apportioned to the transferee foreign corporation's classes of gross income in accordance with §§1.882-4(b)(1), 1.954-1(c), and 1.960-1(c) and (d) (as applicable). *See* proposed §1.367(d)-1(c)(2)(ii) and (e)(2)(ii). These provisions, described as "minor clarifications" in the preamble to the proposed regulations, clarified "that the allowable deduction is allocated and apportioned under the provisions cited in the previous sentence potentially to any class (or classes) of gross income (as appropriate) rather than solely to gross income subject to subpart F in all circumstances." *See* 88 FR 27819, 27822, and 27825.

One comment suggested that the proposed regulations were unclear as to whether the allowable deduction described in proposed §1.367(d)-1(c)(2)(ii) and (e)(2)(ii) was limited to the listed provisions (§§1.882-4(b)(1), 1.954-1(c), and 1.960-1(c) and (d)) or whether such deduction was more generally available (for example, as a deduction under section 162). The comment posited that the latter approach was more appropriate and requested that the final regulations clarify that the allowable deduction may be allowed as a deduction under section 162. In support, the comment described how, in the case of certain transfers of intangible property to a U.S. person that is not a qualified domestic person, "excessive U.S. taxation" could result if the allowable deduction were limited to the listed provisions, which are provisions relevant to determinations with respect to foreign corporations.

The final regulations do not adopt this comment. The proposed regulations terminated the continued application of section 367(d) upon certain, rather than all, subsequent transfers of intangible property to a U.S. person (that is, upon a repatriation to a qualified domestic person if certain reporting requirements are met). *See* 88 FR 27819,27821, and 27822. The comment, if adopted, would effectively terminate the continued application of section 367(d) by, for example, providing a deduction under section 162 corresponding to each annual inclusion under section 367(d). Indeed, as the proposed regulations explained, the solution contained in the proposed regulations was premised, in relevant part, on the fact that "the deemed (substituted) transferee foreign corporation is not allowed a deduction that could reduce taxable income, even though that deemed transferee foreign corporation is the U.S. transferor or a related U.S. person." *See id*. Thus, a fundamental premise underlying the proposed regulations, and the existing section 367(d) regulations, is that an allowable deduction, instead of being generally available, is limited to the provisions listed in the proposed regulations (§§1.882-4(b)(1), 1.954-1(c), and 1.960-1(c) and (d)). To adopt the comment's suggestion would therefore be inconsistent with the proposed regulations and section 367(d) generally.

The comment also suggested that, when a subsequent transfer of intangible property results in treating the same entity as U.S. transferor and transferee foreign corporation under the section 367(d) regulations, the continued application of section 367(d) should terminate by reason of that convergence. As support, the comment cited to a case and guidance involving circumstances in which a taxpayer acquired its own debt. The Treasury Department and the IRS do not agree with this suggestion for the reasons described in the preceding paragraph, and references to cases or guidance involving a taxpayer acquiring its own debt are not instructive for, nor consistent with, the statutory and regulatory framework of section 367(d). Section 367(d) relies upon a statutory fiction that imposes a notional regime with a prescribed payor and payee, and the regulations describe cases in which a successor succeeds to the notional payment on both sides of the construct. For example, §1.367(d)-1T(e)(1) provides that a related person can succeed an initial U.S. transferor for purposes of includ-

ing income under section 367(d), and §1.367(d)-1T(f)(3) provides that a related person can succeed to the payor side of the deemed payment fiction. Where intangible property is returned to the original U.S. transferor, that U.S. transferor is also the successor transferee under the statutory and regulatory framework of section 367(d), and, under the express language of §1.367(d)-1T(f)(3), the annual inclusion under section 367(d) continues. This is precisely the issue the proposed regulations were intended to address, and new regulations providing a rule for terminating an annual inclusion stream would have been largely unnecessary if the deemed payment construct collapsed automatically in such cases. Instead, this Treasury Decision provides the exclusive means by which the continued application of section 367(d) may be terminated by reason of a subsequent transfer of intangible property to a U.S. person.

V. *Multiple Transfers Before Repatriation*

One comment suggested changes to the proposed regulations to accommodate repatriations preceded by certain transfers of intangible property subject to section 367(d) between related foreign corporations. To illustrate this suggestion, the comment posited an example pursuant to which a repatriation was first preceded by a distribution under section 311 of the intangible property (first section 311 distribution) from one CFC (original transferee foreign corporation, or TFC) to another CFC (successor TFC). The successor TFC then distributes the intangible property under section 311 to a qualified domestic person (second 311 distribution) in a transaction with respect to which the successor TFC did not recognize gain or loss (under the theory that successor TFC's adjusted basis in the intangible property equaled the intangible property's fair market value).

On those modified facts, the comment described how the original TFC could recognize gain subject to U.S. taxation by reason of the first section 311 distribution (not under section 367(d), but rather under, for example, section 951A(a) as to a United States shareholder), and the qualified domestic person could recognize that same amount of gain upon the repatriation after the second 311 distribution under the proposed regulations (by reason of the application of the gain recognition rule in proposed §1.367(d)-1(f)(4)(ii)(B), under which gain is determined by reference to the U.S. transferor's former adjusted basis in the property). And, because the successor TFC is the TFC at the time of the repatriation (that is, at the time of the second section 311 distribution), the required adjustments described in proposed §1.367(d)-1(f)(2) would apply by reference to the successor TFC, which did not recognize gain or loss on the repatriation under the theory described above, rather than to the original TFC, which recognized gain on the first section 311 distribution. To address this concern, the comment suggested modifying the proposed regulations in a manner that would effectively negate a prior transfer that was subject to tax under a separate regime (for example, section 951A).

The example provided in the comment highlights significant potential interactions between the operation of section 367(d) and other generally operative provisions in the Code and regulations. For example, §1.367(d)-1T(f)(3) explicitly provides that the ongoing annual royalty construct is unaffected by the taxable distribution of intangible property from the original TFC to the successor TFC in the first section 311 distribution, and §1.367(d)-1T(d)(1) and (f)(1) are clear that the amount of income recognized by the U.S. transferor upon a later indirect or direct disposition of intangible property to an unrelated person is determined using the transferor's original basis in the property. However, the distribution of the intangible property from the original TFC to the successor TFC described in the comment's example might result in taxable gain to the original TFC that would be treated as tested income under section 951A, notwithstanding the lack of an acceleration of income under section 367(d). Similarly, the successor TFC might take the intangible property with a fair market value basis under section 301(d), even though that increased basis would not be available to reduce gain under section 367(d). Essentially, the example posited in the comment highlights that it may be possible to recognize income under both sections 951A and 367(d) with respect to the same property in some fact patterns where separate transactions occur in separate foreign corporations, notwithstanding that that result would not occur in cases where the property is not transferred among multiple foreign corporations. Coordinating potential disparities between income recognition under section 367(d) as compared to other generally applicable provisions of the Code, and potential disparities in tax basis for purposes of section 367(d) as compared to adjusted basis for other purposes, is beyond the scope of this rulemaking. The request for additional guidance addressing multiple related transfers, therefore, is not adopted.

VI. *Reporting*

As a condition for terminating the application of section 367(d) with respect to repatriated intangible property, proposed §1.367(d)-1(f)(4)(i)(B) would have required a U.S. transferor to provide the information described in proposed §1.6038B-1(d)(2)(iv). If a U.S. transferor failed to provide that information, the repatriation was subject to proposed §1.367(d)-1(f)(3) such that the section 367(d) regulations, including the requirement to take an annual inclusion into account over the useful life of the intangible property, continued to apply. However, a U.S. transferor was eligible for relief under the proposed regulations if proposed §1.367(d)-1(f)(4)(i)(B)(*2*) would have applied to the subsequent transfer of intangible property but for the fact that the required information was not provided and the U.S. transferor, upon becoming aware of the failure, promptly provided the required information, explained its failure to comply, and met certain other requirements (if applicable).

One comment requested clarifications of the reporting and relief provisions. First, the comment requested that the final regulations clarify whether relief for a failure to comply is, in relevant part, also conditioned on the U.S. transferor timely filing one or more amended returns for the taxable year in which the subsequent transfer occurred and succeeding years, and, if the U.S. transferor is under examination when an amended return is filed, providing a copy of the amended return(s) to the IRS personnel conducting the exam-

ination. The Treasury Department and the IRS adopt this comment by revising of §1.367(d)-1(f)(5) to clarify that the relief for a failure to comply is conditioned upon the requirements listed in the previous sentence (if applicable).

The comment also requested that the Treasury Department and the IRS consider prescribing in the future a particular form for filing the required information under proposed §1.367(d)-1(f)(5). The Treasury Department and the IRS will consider prescribing a particular form as part of future improvements to reporting with respect to section 367(d) generally. However, to provide taxpayers with additional guidance on the manner for providing a U.S. transferor's explanation for its failure to comply to the IRS, the final regulations provide an eFax number for such purpose (and, if a taxable year of the U.S. transferor is under examination, that information should instead be provided to the IRS personnel conducting the examination).

Finally, the comment suggested clarifications or modifications to the requirements in proposed §1.367(d)-1(f)(5) that a U.S. transferor "promptly" address its failure to file and to the way the U.S. transferor provides the remedial information (that is, to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International, or any successor to that role). The comment suggested that "promptly" does not provide sufficient guidance to taxpayers (the comment requested a prescribed period) and the comment asserted that it is unusual for regulations to require a taxpayer to provide information directly to a specified official within the IRS. The final regulations do not adopt these suggestions. The Treasury Department and the IRS believe that "promptly" requiring the U.S. transferor to address its failure to comply, rather than providing a specific period, allows flexibility so that the relief may apply as appropriate to a taxpayer's particular facts and circumstances. Additionally, proposed §1.367(d)-1(f)(5) is modeled on similar relief provisions in other contexts (for example, §§1.367(a)-8(p) and 1.721(c)-6(f)).

The Treasury Department and the IRS clarify proposed §1.367(d)-1(f)(5) by striking the last clause that appeared in the second sentence. That sentence described the consequences of a failure to comply, namely the continued application of the annual inclusion stream pursuant to proposed §1.367(d)-1(f)(3) and application of the gain recognition rule of proposed §1.367(d)-1(f)(4)(i)(A). If the failure to comply is remedied, the rules of the proposed regulations are treated as satisfied as of the date of the repatriation (so, the repatriation terminates the continued application of section 367(d) and the U.S. transferor, if applicable, would take a partial annual inclusion into account pursuant to proposed §1.367(d)-1(f)(4)(i)(B)(*1*)).

VII. *Clarification to Example 3*

Proposed §1.367(d)-1(f)(6)(ii)(C) (*Example 3*) illustrated the determination of a qualified domestic person's adjusted basis in intangible property under the proposed regulations. In that example, TFC transferred the intangible property to USS (a qualified domestic person as defined in proposed §1.367(d)-1(f)(4)(iii)) in an exchange described in section 351(b) pursuant to which TFC recognized $50x of gain and USP recognized $50x of gain under proposed §1.367(d)-1(f)(4)(i)(A). The analysis under proposed §1.367(d)-1(f)(6)(ii)(C)(*2*) was, and remains in this Treasury decision, limited to the determination of USS's adjusted basis in the intangible property.

One comment requested, in relevant part, that the final regulations clarify that TFC's earnings and profits and gross income arising by reason of the repatriation are reduced by the amount of gain recognized by USP under proposed §1.367(d)-1(f)(4)(i)(A) ($50x). The Treasury and the IRS adopt the comment by clarifying in the facts of the example that, under §1.367(d)-1(f)(2)(i), TFC will reduce its earnings and profits and gross income by $50x, the amount arising by reason of the repatriation and the amount of gain recognized by USP under §1.367(d)-1(f)(4)(i)(A).

VIII. *Section 904(d) Foreign Branch Income Rules*

Proposed §1.904-4(f)(2)(vi)(D)(*4*) described the application of the principles of section 367(d) to subsequent transfers of intangible property in determining adjustments to the amount of gross income attributable to a foreign branch under §1.904-4(f)(2)(vi)(D). Specifically, the proposed regulations would have provided that each transfer to which §1.904-4(f)(2)(vi)(D) applies is considered independently from any other preceding or subsequent transfer of the intangible property, with the result that the subsequent transfer rules in the regulations under section 367(d), including the rules for repatriations provided in the proposed regulations, do not apply in determining gross income attributable to a foreign branch under §1.904-4(f)(2)(vi)(D). *See* 88 FR 27819, 27825, and 27826.

One comment requested that the Treasury Department and the IRS finalize the provisions of the proposed regulations without finalizing proposed §1.904-4(f)(2)(vi)(D)(*4*). The comment suggested that such an approach could allow for further consideration of ways to simplify the application of section 367(d) principles in §1.904-4(f)(2)(vi)(D). The comment suggested that instead of finalizing proposed §1.904-4(f)(2)(vi)(D)(*4*), that provision could be adopted as a temporary regulation, or alternatively, this preamble could state that, until the implementation of final regulations addressing this issue, the Treasury Department and the IRS intend that rules related to section 367(d) and subsequent transfer will not apply for purposes of section 904(d).

A broader reconsideration of the application of section 367(d) principles in §1.904-4(f)(2)(vi)(D) is beyond the scope of these final regulations. The Treasury Department and the IRS believe it is necessary to finalize proposed §1.904-4(f)(2)(vi)(D)(*4*) to ensure the proper application of the foreign branch income rules under §1.904-4(f)(2)(vi)(D) as those rules currently stand. This is because, as explained in the preamble to the proposed regulations, while §1.904-4(f)(2)(vi)(D) relies on the principles of section 367(d) to determine the appropriate amount of gross income that is attributable to a foreign branch, the purposes of section 367(d) and §1.904-4(f)(2)(vi)(D) are different. *See* 88 FR 27819, 27825 (providing that, with respect to

§1.904-4(f)(2)(vi)(D), "[i]f there are multiple transfers of an item of intangible property over time, each transfer must be separately evaluated and could result in differing amounts of deemed annual payments depending on any interim changes in the value of the intangible property between successive transfers…these proposed regulations provide that each successive transfer to which §1.904-4(f)(2)(vi)(D) applies is considered independently from any other preceding or subsequent transfers."). Accordingly, the final regulations do not adopt this comment and proposed §1.904-4(f)(2)(vi)(D) is finalized without change.

IX. *Applicability Dates*

The proposed regulations were generally proposed to apply to subsequent dispositions of intangible property occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. *See* proposed §§1.367(d)-1(j)(2), 1.904-4(q)(3), and 1.6038B-1(g). Comments recommended that the proposed regulations apply retroactively.

The Treasury Department and the IRS generally consider several factors when evaluating whether a rule should apply retroactively on an elective basis. For example, and as relevant to the proposed regulations, retroactive application may be more compelling where the regulations are issued with respect to new legislation, or where retroactive application is necessary to achieve certain policy objectives. The Treasury Department and the IRS also evaluate the additional administrative burden likely to result from retroactive application. Finally, where the regulations represent a change in existing regulations, consideration is given to whether retroactive application could advantage certain taxpayers over similarly situated taxpayers, based on whether the relevant taxable year remains open for the taxpayer to amend their return to take advantage of the change. The Treasury Department and the IRS have determined that, on balance, these factors, though not representing an exhaustive list of factors, weigh against permitting the retroactive application of the final regulations and therefore do not adopt these comments.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0026. The collection of information in these final regulations is in §1.6038B-1(d)(2)(iv). This information is necessary to ensure that proposed §1.367(d)-1(f)(4) is appropriately applied to the subsequent transfer. The collection of information is required to comply with section 367(d). The likely respondents are domestic corporations. Burdens associated with these requirements will be reflected in the burden for Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*.

Estimated total annual reporting burden is 1,601 hours.

Estimated average annual burden per respondent is 2.4 hours.

Estimated number of respondents is 667.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities.

The Treasury Department and the IRS do not have data readily available to assess the number of small entities potentially affected by the final regulations. However, entities potentially affected by these proposed regulations are generally not small entities, because of the resources and investment necessary to develop intangible property and, once so developed, transfer the intangible property to a foreign corporation. Therefore, the Treasury Department and the IRS have determined that there will not be a substantial number of domestic small entities affected by the final regulations. Consequently, the Treasury Department and the IRS certify that the final regulations will not have a significant economic impact on a substantial number of small entities.

IV. *Section 7805(f)*

Pursuant to section 7805(f) of the Code, the proposed regulations (REG-113839-22) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

V. *Unfunded Mandates Reform Act*

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

VI. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes sub-

stantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

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

* * * * *

Section 1.367(d)-1 also issued under 26 U.S.C. 367(d).

* * * * *

§1.367(a)-1 [Amended]

Par. 2. Section 1.367(a)-1 is amended by removing the language "section 936(h)(3)(B)" in paragraphs (d)(5) and (6) and adding the language "section 367(d)(4)" in its place.

Par. 3. Section 1.367(d)-1 is amended by:

a. Removing reserved paragraphs (c)(1) through (2).

b. Adding paragraph (c) heading and paragraphs (c)(1) and (2).

c. Removing reserved paragraphs (c)(4) through (g)(2) (introductory text).

d. Adding paragraphs (c)(4) and (d) through (f).

e. Removing paragraph (g)(2)(i), reserved paragraphs (g)(2)(ii) through (iii)(D), paragraph (g)(2)(iii)(E), and reserved paragraph (g)(2)(iii) undesignated concluding paragraph.

f. Adding paragraph (g) heading and paragraphs (g)(1) and (2).

g. Removing reserved paragraphs (g)(4) through (i).

h. Adding paragraphs (g)(4) through (6), (h), and (i).

i. Revising paragraph (j).

The additions and revision read as follows:

§1.367(d)-1 Transfers of intangible property to foreign corporations.

* * * * *

(c) *Deemed payments upon transfer of intangible property to foreign corporation*—(1) *In general.* For further guidance, *see* §1.367(d)-1T(c)(1).

(2) *Required adjustments*. For further guidance, *see* §1.367(d)-1T(c)(2) introductory text and (c)(2)(i).

(i) [Reserved]

(ii) The deemed payment is treated as an allowable deduction (whether or not that amount is paid) of the transferee foreign corporation properly allocated and apportioned to the appropriate classes of gross income in accordance with §§1.882-4(b)(1), 1.951A-2(c)(3), 1.954-1(c), and 1.960-1(c) and(d), as applicable.

* * * * *

(4) *Blocked income*. For further guidance, *see* §1.367(d)-1T(c)(4).

(d) *Subsequent transfer of stock of transferee corporation to unrelated person*. For further guidance, *see* §1.367(d)-1T(d).

(e) *Subsequent transfer of stock of transferee foreign corporation to related person*—(1) *Transfer to related U.S. person treated as disposition of intangible property*. For further guidance, *see* §1.367(d)-1T(e)(1).

(2) *Required adjustments*. For further guidance, *see* §1.367(d)-1T(e)(2) introductory text and (e)(2)(i).

(i) [Reserved]

(ii) The deemed payment is treated as an allowable deduction (whether or not that amount is paid) of the transferee foreign corporation properly allocated and apportioned to the appropriate classes of gross income in accordance with §§1.882-4(b)(1), 1.951A-2(c)(3), 1.954-1(c), and 1.960-1(c) and(d), as applicable.

(iii) For further guidance, *see* §1.367(d)-1T(e)(2)(iii) through (e)(4).

(iv) [Reserved]

(3) through (4) [Reserved]

(f) *Subsequent disposition of transferred intangible property by transferee foreign corporation*—(1) *In general*. For further guidance, *see* §1.367(d)-1T(f)(1).

(2) *Required adjustments*. If a U.S. transferor is required to recognize gain under paragraph (f)(4)(i)(A) of this section or §1.367(d)-1T(f)(1), then, in addition to the adjustments described in paragraph (c)(2)(ii) of this section and §1.367(d)-1T(c)(2) with respect to the deemed payment described in §1.367(d)-1T(f)(1)(ii)—

(i) For purposes of chapter 1 of the Code, the transferee foreign corporation reduces (but not below zero) the portion of its earnings and profits and gross income arising by reason of the subsequent disposition of the intangible property by the amount of gain recognized by the U.S. transferor under paragraph (f)(4)(i)(A) of this section or §1.367(d)-1T(f)(1); and

(ii) The U.S. transferor may establish an account receivable from the transferee foreign corporation equal to the amount of gain recognized under paragraph (f)(4)(i)(A) of this section or §1.367(d)-1T(f)(1) in accordance with §1.367(d)-1T(g)(1).

(3) *Subsequent transfer of intangible property to related person*. Except as provided in paragraph (f)(4)(i)(B) of this section, a U.S. person's requirement to recognize income under §1.367(d)-1T(c) or (e) is not affected by the transferee foreign corporation's subsequent disposition of the transferred intangible property to a related person. For purposes of any required adjustments, and of any accounts receivable created under §1.367(d)-1T(g)(1), the related person that receives the intangible property is treated as the transferee foreign corporation.

(4) *Subsequent transfer of intangible property to qualified domestic person*—(i) *In general*. Except as provided in paragraph (f)(4)(v) of this section, if a U.S. person transfers intangible property subject to section 367(d) and the rules of this

section and §1.367(d)-1T to a foreign corporation in an exchange described in section 351 or 361 and, within the useful life of the intangible property, that transferee foreign corporation subsequently disposes of the intangible property to a qualified domestic person, then—

(A) The U.S. transferor of the intangible property (or any person treated as such pursuant to §1.367(d)-1T(e)(1)) is required to recognize gain, as applicable, equal to the amount described in paragraph (f)(4)(ii) of this section; and

(B) If the U.S. transferor provides the information described in §1.6038B-1(d)(2)(iv), then—

(*1*) The U.S. transferor is required to recognize a deemed payment as provided in §1.367(d)-1T(f)(1)(ii); and

(*2*) The intangible property is no longer subject to section 367(d), this section, or §1.367(d)-1T after applying paragraphs (f)(4)(i)(A) and (f)(4)(i)(B)(*1*) of this section.

(ii) *Gain recognition for U.S. transferor*. The amount of gain a U.S. transferor must recognize under paragraph (f)(4)(i)(A) of this section is determined as follows—

(A) If the intangible property is transferred basis property (as defined in section 7701(a)(43)) by reason of the subsequent disposition (determined without regard to section 367(d), this section, and §1.367(d)-1T), the amount of gain, if any, the transferee foreign corporation would recognize if its adjusted basis in the intangible property were equal to the U.S. transferor's former adjusted basis in the property; or

(B) If the intangible property is not transferred basis property by reason of the subsequent disposition (determined without regard to section 367(d), this section, and §1.367(d)-1T), the excess, if any, of the fair market value of the intangible property on the date of the subsequent disposition over the U.S. transferor's former adjusted basis in that property.

(iii) *Qualified domestic person*. For purposes of this paragraph (f)(4), a *qualified domestic person* means—

(A) The U.S. transferor that initially transferred intangible property subject to section 367(d).

(B) A U.S. person treated as a U.S. transferor under §1.367(d)-1T(e)(1), provided such person is an individual or a corporation other than a corporation exempt from tax under section 501(a), a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), a DISC (as defined in section 992(a)(1)), or an S corporation (as defined in section 1361(a));

(C) A U.S. person that is an individual related, within the meaning of paragraph (h)(2)(ii) of this section and §1.367(d)-1T(h), to the person described in paragraph (f)(4)(iii)(A) or (B) of this section; or

(D) A U.S. person that is a corporation related, within the meaning of paragraph (h)(2)(ii) of this section and §1.367(d)-1T(h), to the person described in paragraph (f)(4)(iii)(A) or (B) of this section, other than a corporation exempt from tax under section 501(a), a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), a DISC (as defined in section 992(a)(1)), or an S corporation (as defined in section 1361(a)).

(iv) *Qualified domestic person's basis in the intangible property*. The qualified domestic person's adjusted basis in the intangible property is—

(A) In the case of a subsequent disposition of intangible property described in paragraph (f)(4)(ii)(A) of this section, and subject to any applicable limitations that may apply under the Code, the lesser of the U.S. transferor's former adjusted basis in the intangible property or the transferee foreign corporation's adjusted basis in the intangible property (as determined immediately before the subsequent disposition), in each case increased by the greater of the amount of gain (if any) described in paragraph (f)(4)(ii)(A) of this section and recognized by the U.S. transferor or the amount of gain (if any) recognized by the transferee foreign corporation as to the intangible property by reason of the subsequent disposition; or

(B) In the case of a subsequent disposition of intangible property described in paragraph (f)(4)(ii)(B) of this section, the fair market value of the intangible property (as determined on the date of the subsequent disposition).

(v) *Special rule for related transactions*. If the transferee foreign corporation subsequently disposes of the transferred intangible property to a person that would, absent this paragraph (f)(4)(v), be a qualified domestic person (initial transferee) and, as part of a series of related transactions, the intangible property is subsequently disposed of to any other person, including by reason of multiple dispositions, then the initial transferee is treated as a qualified domestic person only if the ultimate recipient of the intangible property is a qualified domestic person. *See* paragraphs (f)(6)(ii)(D) and (E) of this section (*Examples 4* and *5*) for illustrations of the application of this paragraph (f)(4)(v).

(5) *Relief for certain failures to comply*. This paragraph (f)(5) provides relief if paragraph (f)(4)(i)(B)(*2*) of this section would apply but for the U.S. transferor's failure to provide the information required by paragraph (f)(4)(i)(B) of this section (a "failure to comply"). When a failure to comply occurs, the subsequent disposition of the transferred intangible property is generally subject to paragraphs (f)(3) and (f)(4)(i)(A) of this section. Nevertheless, a failure to comply is deemed not to have occurred (regardless of whether the U.S. transferor continued to include amounts in gross income under §1.367(d)-1T(c) or (e) after the subsequent disposition), and the requirements of paragraph (f)(4)(i)(B) of this section are treated as satisfied as of the date of the subsequent disposition if—

(i) Promptly after the U.S. transferor becomes aware of the failure, the U.S. transferor provides such information and provides a reasonable explanation for its failure to comply to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate), by eFax at (855) 582-4842 (or as otherwise directed on irs.gov), or, if any taxable year of the U.S. transferor is under examination when the discovery is made, to the Internal Revenue Service personnel conducting the examination;

(ii) The U.S. transferor timely files an amended return for the taxable year in which the subsequent disposition occurred (and, if applicable, for each taxable year starting with the taxable year immediately after the taxable year in which the subsequent disposition occurred and ending

with the taxable year in which the U.S. transferor seeks relief under this paragraph (f)(5)) that includes the information required by paragraph (f)(4)(i)(B) of this section; and

(iii) If any taxable year of the U.S. transferor is under examination when an amended return is filed, the U.S. transferor provides a copy of the amended return (or, if applicable, amended returns) to the Internal Revenue Service personnel conducting the examination.

(6) *Examples*—(i) *Assumed facts*. For purposes of the examples in paragraph (f)(6)(ii) of this section, and except where otherwise indicated, the following facts are assumed.

(A) USP and USS are domestic corporations that each use a calendar taxable year.

(B) TFC is a foreign corporation whose functional currency is the U.S. dollar.

(C) In year 1, USP transfers intangible property, as defined in section 367(d)(4), with a $0 adjusted basis, to TFC in a section 351 exchange (the transferred IP), and such transfer is subject to section 367(d).

(D) Each annual inclusion (including any amount described in §1.367(d)-1T(f)(1)(ii)) is taken into account under section 367(d)(2)(A)(ii)(I) and §1.367(d)-1T(c)(1).

(E) Any subsequent transfer or disposition of stock of TFC or the transferred IP occurs within the useful life of the transferred IP.

(F) All transactions are respected under general principles of tax law.

(ii) *Examples*. The following examples illustrate the application of paragraph (f)(4) of this section and other paragraphs of this section that relate to paragraph (f)(4).

(A) *Example 1*: *Complete liquidation of transferee foreign corporation into a qualified domestic person*—(*1*) *Facts*. In year 2, USP transfers all the stock of TFC to USS, a related person within the meaning of §1.367(d)-1T(h) and paragraph (h)(2)(ii) of this section, in a section 351 exchange to which §1.367(d)-1T(e)(1) applies (the year 2 transfer). In year 3, TFC distributes all its property (including the transferred IP) to USS pursuant to a complete liquidation to which sections 332 and 337 apply (the year 3 liquidation). The all earnings and profits amount determined under §1.367(b)-2(d) with respect to the stock of TFC held by USS is $0. The information described in §1.6038B-1(d)(2) is provided by USS for the taxable year in which the year 3 liquidation occurs.

(*2*) *Analysis*—(*i*) *The year 2 transfer*. Because the year 2 transfer involves a transfer of all the stock of TFC by USP (the initial U.S. transferor) to a related U.S. person (USS), under §1.367(d)-1T(e)(1)(i) USS (a successor U.S. transferor) is treated as receiving the right to receive a proportionate share of the contingent annual payments that USP would have otherwise taken into account under §1.367(d)-1T(c). As determined under §1.367(d)-1T(e)(4), USS's proportionate share of such payments is 100 percent. Accordingly, USS will annually include in its gross income the full amount of each of the annual payments that USP would otherwise have taken into account under §1.367(d)-1T(c) over the useful life of the transferred IP, and USP will not recognize any gain upon the year 2 transfer. *See* §1.367(d)-1T(e)(1)(ii) and (iii).

(*ii*) *The year 3 liquidation*. The year 3 liquidation results in a subsequent disposition of the transferred IP to USS. USS, a U.S. person treated as the U.S. transferor pursuant to §1.367(d)-1T(e)(1), is a qualified domestic person within the meaning of paragraph (f)(4)(iii) of this section. Pursuant to paragraph (f)(4)(i)(A) of this section, USS must recognize the amount of gain described in paragraph (f)(4)(ii) of this section. Because the year 3 liquidation is a complete liquidation to which sections 332 and 337 apply, the intangible property is transferred basis property (as defined in section 7701(a)(43) and determined without regard to section 367(d), this section, and §1.367(d)-1T), and therefore paragraph (f)(4)(ii)(A) of this section applies to determine the amount of any gain USS must recognize. Because TFC does not recognize gain with respect to the transferred IP (regardless of the adjusted basis in the intangible property) by reason of the year 3 liquidation, the amount of gain described in paragraph (f)(4)(ii)(A) of this section is $0. Accordingly, USS does not recognize gain pursuant to paragraph (f)(4)(i)(A) of this section by reason of the year 3 liquidation. Additionally, because USS provides the information described in §1.6038B-1(d)(2), paragraph (f)(4)(i)(B) of this section applies to the year 3 liquidation. USS therefore recognizes a deemed payment representing the part of USS's taxable year during which TFC held the transferred IP pursuant to paragraph (f)(4)(i)(B)(*1*) of this section, and the required adjustments described in paragraph (c)(2)(ii) of this section and §1.367(d)-1T(c)(2)(i) apply as to the deemed payment. Also, because USS does not recognize gain pursuant to paragraph (f)(4)(i)(A) of this section, the required adjustments described in paragraph (f)(2) of this section do not apply. Pursuant to paragraph (f)(4)(i)(B)(*2*) of this section, after taking the deemed payment into account, the transferred IP is no longer subject to section 367(d), this section, and §1.367(d)-1T. Finally, pursuant to paragraph (f)(4)(iv)(A) of this section, USS's adjusted basis in the transferred IP is $0, which is equal to USP's former adjusted basis in the transferred IP ($0), increased by the greater of the amount of gain recognized by USS under paragraph (f)(4)(i)(A) of this section ($0) or the amount of gain recognized by TFC upon the year 3 liquidation ($0).

(B) *Example 2*: *Taxable distribution of the transferred intangible property to a qualified domestic person*—(*1*) *Facts*. The facts are the same as in paragraph (f)(6)(ii)(A) of this section (*Example 1*), except that, instead of in year 3 TFC distributing all its property to USS pursuant to a complete liquidation, in year 3 TFC distributes the transferred IP to USS in a distribution described in section 311(b) when the fair market value of the transferred IP is $100x (the year 3 distribution). TFC's adjusted basis in the transferred IP immediately before the distribution is $0.

(*2*) *Analysis*. The consequence of the year 2 transfer is the same as described in paragraph (f)(6)(ii)(A)(*2*)(*i*) of this section (*Example 1*). Like the consequences described in paragraph (f)(6)(ii)(A)(*2*) of this section (*Example 1*), the year 3 distribution is a subsequent disposition of the transferred IP to USS, a qualified domestic person. Pursuant to paragraph (f)(4)(i)(A) of this section, USS must recognize the amount of gain described in paragraph (f)(4)(ii) of this section. Because the year 3 distribution is described in section 311(b) the intangible property is not transferred basis property (as defined in section 7701(a)(43) and determined without regard to section 367(d), this section, and §1.367(d)-1T), and therefore USS must recognize $100x gain under paragraph (f)(4)(ii)(B) of this section. The $100x gain amount equals the excess of the fair market value of the transferred IP on the date of the year 3 distribution ($100x) over USP's former adjusted basis in the property ($0). TFC, because of USS's gain recognition under paragraph (f)(4)(i)(A) of this section, reduces (but not below zero) the portion of its earnings and profits and gross income arising by reason of the year 3 distribution by the amount of such gain under paragraph (f)(2)(i) of this section. Specifically, because the year 3 distribution requires USS to recognize $100x of gain, TFC reduces the portion of its earnings and profits and gross income that arise by reason of the year 3 distribution, which is $100x (the excess of the fair market value of the transferred IP ($100x) over TFC's adjusted basis in the transferred IP ($0)), by $100x (the amount of gain USS recognizes pursuant to paragraph (f)(4)(i)(A) of this section). As a result, after taking into account the reduction, TFC has no earnings and profits or gross income that arise by reason of the year 3 distribution. Furthermore, USS may establish an account receivable from TFC equal to $100x under paragraph (f)(2)(ii) of this section. Additionally, and as described in paragraph (f)(6)(ii)(A)(*2*) of this section (*Example 1*), pursuant to paragraph (f)(4)(i)(B)(*1*) of this section, USS recognizes a deemed payment for the portion of USS's taxable year during which TFC held the transferred IP, and the required adjustments described in paragraph (c)(2)(ii) of this section and §1.367(d)-1T(c)(2) apply to this deemed payment. After taking these consequences into account, pursuant to paragraph (f)(4)(i)(B)(*2*) of this section, the transferred IP is no longer subject to section 367(d), this section, and §1.367(d)-1T. Finally, pursuant to paragraph (f)(4)(iv)(B) of this section, USS's adjusted basis in the transferred IP is $100x, which is the fair market value of the transferred IP on the date of the year 3 distribution.

(C) *Example 3*: *Qualified domestic person's basis in intangible property when intangible property is repatriated in an exchange described in section 351*(*b*)—(*1*) *Facts*. The facts are the same as in paragraph (f)(6)(ii)(A) of this section (*Example*

1), except that the transfer of stock of TFC to USS in year 2 does not occur and instead of the year 3 liquidation, in year 3 TFC transfers the intangible property to USS (a qualified domestic person as defined in paragraph (f)(4)(iii) of this section) in an exchange described in section 351(b) pursuant to which TFC recognizes $50x of gain and USP recognizes $50x of gain under paragraph (f)(4)(i)(A) of this section (the year 3 exchange), which amount will reduce TFC's earnings and profits and gross income by $50x under paragraph (f)(2)(i) of this section.

(*2*) *Analysis*. Pursuant to paragraph (f)(4)(iv)(A) of this section, USS's adjusted basis in the intangible property is $50x, which is the amount equal to the lesser of USP's former adjusted basis in the property ($0) or TFC's adjusted basis in the property ($0), increased by the greater of the amount of gain recognized by USP under paragraph (f)(4)(i)(A) of this section ($50x) or the amount of gain recognized by TFC upon the year 3 exchange ($50x).

(D) *Example 4*: *Repatriation as part of a series of related transactions culminating in transfer to a foreign corporation*—(*1*) *Facts*. The facts are the same as in paragraph (f)(6)(ii)(A)(*1*) of this section (*Example 1*), except that the year 3 liquidation occurs as part of a series of related transactions pursuant to which USS transfers the transferred IP that it receives from TFC to a related foreign corporation (FC1) in exchange for stock in FC1.

(*2*) *Analysis*. Because the year 3 liquidation occurs as part of a series of related transactions pursuant to which the transferred IP is ultimately contributed to a FC1, a foreign corporation, and because a foreign corporation is not a qualified domestic person pursuant to paragraph (f)(4)(iii) of this section, then, under paragraph (f)(4)(v) of this section, the year 3 liquidation is not treated as a subsequent disposition described in paragraph (f)(4)(i) of this section, but is instead treated as a subsequent disposition described in paragraph (f)(3) of this section.

(E) *Example 5*: *Repatriation as part of a series of related transactions culminating in transfer to a qualified domestic person*—(*1*) *Facts*. The facts are the same as in paragraph (f)(6)(ii)(B)(*1*) of this section (*Example 2*), except that the year 3 distribution occurs as part of a series of related transactions pursuant to which USS disposes of the transferred IP that it receives from TFC to USP.

(*2*) *Analysis*. Because the year 3 distribution occurs as part of a series of related transactions pursuant to which the transferred IP is distributed to USP, and because USP is a qualified domestic person pursuant to paragraph (f)(4)(iii) of this section, paragraph (f)(4)(v) of this section does not prevent paragraph (f)(4)(i) of this section from applying to the year 3 distribution. Accordingly, the consequences under section 367(d) of the year 3 distribution are the same as those described in paragraph (f)(6)(ii)(B)(*2*) of this section (*Example 2*), and the consequences of the subsequent disposition of the transferred IP by USS to USP are determined after applying paragraph (f)(4) of this section to the transfer of the transferred IP by TFC to USS.

(g) *Special rules*—(1) *Establishment of accounts receivable*. For further guidance, *see* §1.367(d)-1T(g)(1).

(2) *Election to treat transfer as sale*. For further guidance, *see* §1.367(d)-1T(g)(2) introductory text.

(i) The intangible property transferred constitutes an operating intangible, as defined in § 1.367(a)-1(d)(6).

(ii) For further guidance, *see* §1.367-1T(g)(2)(ii) through (g)(2)(iii)(D).

(iii)(A) through (D) [Reserved]

(E) The transferred intangible property will be used in the active conduct of a trade or business outside of the United States within the meaning of § 1.367(a)-2 and will not be used in connection with the manufacture or sale of products in or for use or consumption in the United States.

(F) For further guidance, see § 1.367(d)-1T(g)(2)(iii)(F).

* * * * *

(4) *Coordination with section 482*. For further guidance, *see* § 1.367(d)-1T(g)(4)

(5) *Determination of fair market value*. For further guidance, *see* §1.367(d)-1T(g)(5).

(6) *Anti-abuse rule*. For further guidance, *see* §1.367(d)-1T(g)(6).

(h) *Related person*. For further guidance, *see* §1.367(d)-1T(h) introductory text through (h)(1).

(1) [Reserved]

(2) For further guidance, *see* §1.367(d)-1T(h)(2) introductory text and (h)(2)(i).

(i) [Reserved]

(ii) Section 1563 applies (for purposes of section 267(f)) without regard to section 1563(b)(2).

(i) *Effective date*. For further guidance, *see* §1.367(d)-1T(i).

(j) *Applicability dates*—(1) *In general*. This section applies to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under §301.7701-3 of this chapter that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, *see* §1.367(d)-1T as contained in 26 CFR part 1 revised as of April 1, 2016.

(2) *Certain subsequent dispositions of intangible property*. Paragraphs (c)(2)(ii), (e)(2)(ii), (f)(2) through (5), and (h)(2)(ii) of this section apply to subsequent dispositions of intangible property occurring on or after October 10, 2024. For subsequent dispositions of intangible property occurring before October 10, 2024 *see* §1.367(d)-1T as contained in 26 CFR part 1 revised as of April 1, 2022.

Par. 4. Section 1.367(d)-1T is amended by:

a. Revising paragraph (c)(2)(ii).

b. Removing the undesignated paragraph following paragraph (c)(2)(ii).

d. Revising paragraphs (e)(2)(ii) and (f)(2).

e. Removing and reserving paragraph (f)(3) and adding reserved paragraphs (f)(4) through (6).

f. Designating the undesignated paragraph following paragraph (g)(2)(iii)(E) as paragraph (g)(2)(iii)(F).

g. Revising paragraph (h)(2)(ii).

The revisions read as follows:

§1.367(d)-1T Transfers of intangible property to foreign corporations (temporary).

* * * * *

(c) * * *

(2) * * *

(ii) For further guidance, *see* §1.367(d)-1(c)(2)(ii).

* * * * *

(e) * * *

(2) * * *

(ii) For further guidance, *see* §1.367(d)-1(e)(2)(ii);

* * * * *

(f) * * *

(2) *Required adjustments.* For further guidance, *see* §1.367(d)-1(f)(2) through (6).

(3) through (6) [Reserved]

* * * * *

(h) * * *

(2) * * *

(ii) For further guidance, *see* §1.367(d)-1(h)(2)(ii).

* * * * *

§1.367(e)-2 [Amended]

Par. 5. Section 1.367(e)-2 is amended by removing the language "section 936(h)(3)(B)" in the last sentence of paragraph (b)(2)(i)(B) and adding the language "section 367(d)(4)" in its place.

Par. 6. Section 1.904-4 is amended by adding paragraph (f)(2)(vi)(D)(*4*) and revising paragraph (q)(3) to read as follows:

§1.904-4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(D) * * *

(*4*) *Multiple transfers of intangible property*. If the same intangible property is transferred in a series of transfers described in paragraph (f)(2)(vi)(D)(*1*) of this section, each successive transfer is separately subject to the provisions of paragraph (f)(2)(vi)(D)(*1*) and will not terminate or otherwise affect the application of paragraph (f)(2)(vi)(D)(*1*) to a prior transfer described in paragraph (f)(2)(vi)(D)(*1*).

* * * * *

(q) * * *

(3) Except as provided in the following sentence, paragraph (f) of this section applies to taxable years that begin after December 31, 2019, and end on or after November 2, 2020. Paragraph (f)(2)(vi)(D)(*4*) of this section applies to taxable years that begin on or after October 10, 2024.

Par. 7. Section 1.951A-2 is amended by revising paragraph (c)(2) to read as follows:

§1.951A-2 Tested income and tested loss.

* * * * *

(c) * * *

(2) *Determination of gross income and allowable deductions*. For purposes of determining tested income and tested loss, the gross income and allowable deductions of a controlled foreign corporation for a CFC inclusion year are determined under the rules of § 1.952-2 for determining the subpart F income (as defined in section 952) of the controlled foreign corporation, except, for a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as an insurance company to which subchapter L of chapter 1 of the Code applies, the text "the principles of §§ 1.953-4 and 1.953-5" means "the rules of sections 953 and 954(i)" in § 1.952-2(b)(2).

* * * * *

Par. 8. Section 1.951A-7 is amended by adding a paragraph (e) to read as follows:

§1.951A-7 Applicability dates.

* * * * *

(e) *Determination of gross income and allowable deductions*. Section 1.951A-2(c)(2) applies to taxable years of foreign corporations ending on or after October 10, 2024, and to taxable years of United States shareholders in which or with which such taxable years end. For taxable years of foreign corporations ending before October 10, 2024, and to taxable years of United States shareholders in which or with which such taxable years end, *see* §1.951A-2(c)(2)(i) and (ii) as contained in 26 CFR part 1, revised as of April 1, 2022.

Par. 9. Section 1.6038B-1 is amended by:

a. Removing reserved paragraphs (d)(1) through (1)(iii).

b. Adding paragraphs (d) heading and (d)(1) introductory text and reserved paragraphs (d)(1)(i) through (iii).

c. Removing reserved paragraphs (d)(1)(viii) through (d)(2).

d. Adding paragraphs (d)(1)(viii), (d)(2), and (g)(8).

The additions read as follows:

§1.6038B-1 Reporting of certain transfers to foreign corporations.

* * * * *

(d) *Transfers subject to section 367(d)*—(1) *Initial transfer*. For further guidance,

see §1.6038B–1T(d)(1) introductory text through (d)(1)(iii).

(i) through (iii) [Reserved]

* * * * *

(viii) *Other intangibles*. For further guidance, see § 1.6038B-1T(d)(1)(viii).

(2) *Subsequent transfers*. For additional, *see* § 1.6038B–1T(d)(2) introductory text through (d)(2)(ii).

(i) through (ii) [Reserved]

(iii) *Subsequent transfer*. Except for a subsequent transfer described in paragraph (d)(2)(iv) of this section, provide the following information concerning the subsequent transfer:

(A) For further guidance, *see* § 1.6038B–1T(d)(2)(iii)(A) through (C).

(B) through (C) [Reserved]

(iv) *Subsequent transfer of intangible property to a qualified domestic person*. Provide the following information concerning a subsequent transfer of intangible property described in §1.367(d)-1(f)(4)(i):

(A) A statement providing that §1.367(d)-1(f)(4)(i)(B) applies to the subsequent transfer;

(B) A general description of the subsequent transfer and any wider transaction of which it forms a part, including the U.S. transferor's former adjusted basis in the intangible property and the transferee foreign corporation's adjusted basis in the intangible property (as determined immediately before the subsequent transfer), the amount and computation of any gain recognized by the U.S. transferor under §1.367(d)-1(f)(4)(i)(A), and a description of whether the intangible property was, or is expected to be, subsequently transferred to one or more other persons (as described in §1.367(d)-1(f)(4)(v));

(C) A description of the intangible property;

(D) A copy of the Form 926 with respect to the original transfer of the intangible property and any attachments identifying the intangible property as within the scope of section 367(d).

(E) The name, address, and taxpayer identification number of the qualified domestic person that receives the intangible property, including a statement describing the relationship between the U.S. transferor and the qualified domestic person, and, if applicable, such information regarding any other persons described in §1.367(d)-1(f)(4)(v); and

(F) Any other information as may be prescribed by the Commissioner in publications, forms, instructions, or other guidance.

* * * * *

(g) * * *

(8) Paragraphs (d)(2)(iii) introductory text and (d)(2)(iv) of this section apply to

transfers occurring on or after October 10, 2024.

Par. 10. Section 1.6038B-1T is amended by revising paragraph (d)(2)(iii) introductory text to read as follows:

§ 1.6038B-1T Reporting of certain transactions to foreign corporations (temporary).

* * * * *

(d) * * *

(2) * * *

(iii) *Subsequent transfer*. For further guidance, see § 1.6038B-1T(d)(2)(iii) introductory text:

* * * * *

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: September 23, 2024.

Aviva Aron-Dine,
Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register October 09, 2024, 8:45 a.m., and published in the issue of the Federal Register for October 10, 2024, 89 FR 82160)

Part III

Expenses Treated as Amounts Paid for Medical Care

Notice 2024-71

SECTION 1. PURPOSE

This notice provides a safe harbor under section 213 of the Internal Revenue Code for amounts paid for condoms.

SECTION 2. BACKGROUND

Section 213 allows an individual taxpayer an itemized deduction for expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent, to the extent that such expenses exceed 7.5 percent of the taxpayer's adjusted gross income. Section 213(d) provides, in relevant part, that the term "medical care" means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. Section 1.213-1(e)(1)(ii) of the Income Tax Regulations provides that deductions for medical care expenses under section 213 are limited to expenses "incurred primarily for the prevention or alleviation of a physical or mental defect or illness" and do not include deductions for expenses that are merely beneficial to an individual's general health.

Amounts treated as expenses for medical care under section 213(d) are eligible to be paid or reimbursed under a health flexible spending arrangement (health FSA), Archer medical savings account (Archer MSA), health reimbursement arrangement (HRA), or health savings account (HSA). However, if an amount is paid or reimbursed under a health FSA, Archer MSA, HRA, HSA, or any other health plan or otherwise, it is not a deductible expense under section 213.

The determination of whether an expense is incurred for the prevention of disease, or other form of medical care under section 213(d), depends upon the facts and circumstances. *Stringham v. Commissioner*, 12 T.C. 580, 584 (1949). Thus, depending on the specific facts and circumstances, amounts paid for condoms may or may not be considered medical expenses under section 213(d).

SECTION 3. SAFE HARBOR

The Treasury Department and the IRS will treat amounts paid for condoms as amounts paid for medical care under section 213(d).

SECTION 4. APPLICATION OF SAFE HARBOR

Because amounts paid for condoms are treated as expenses for medical care under section 213(d), if the other requirements of section 213(a) are met (for example, if a taxpayer's total medical expenses exceed the 7.5-percent adjusted gross income limitation and are not compensated for by insurance or otherwise), then amounts paid by the taxpayer for condoms for the taxpayer, the taxpayer's spouse, or the taxpayer's dependent are deductible as expenses for medical care under section 213. Additionally, because amounts paid for condoms are treated as expenses for medical care under section 213(d), the amounts are also eligible to be paid or reimbursed under a health FSA, Archer MSA, HRA, or HSA. However, if an amount paid for condoms is paid or reimbursed under a health FSA, Archer MSA, HRA, HSA, or any other health plan or otherwise, it is not a deductible expense under section 213.

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Elizabeth Choi and Amy S. Wei of the Office of Associate Chief Counsel (Income Tax & Accounting). However, additional personnel in the Office of Chief Counsel and at the Treasury Department participated in the development of this notice. For additional information, contact Branch 3 of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-5100 (not a toll-free number).

Preventive Care for Purposes of Qualifying as a High Deductible Health Plan under Section 223

Notice 2024-75

I. PURPOSE

This notice expands the list of preventive care benefits permitted to be provided by a high deductible health plan (HDHP) under section 223(c)(2)(C) of the Internal Revenue Code (Code) without a deductible, or with a deductible below the applicable minimum deductible for the HDHP, to include over-the-counter (OTC) oral contraceptives (including emergency contraceptives) and male condoms.[1] This notice also clarifies that (1) all types of breast cancer screening for individuals who have not been diagnosed with breast cancer are treated as preventive care under section 223(c)(2)(C), (2) continuous glucose monitors for individuals diagnosed with diabetes are generally treated as preventive care under section 223(c)(2)(C), and (3) the new safe harbor for absence of a deductible for certain insulin products in section 223(c)(2)(G) applies without regard to whether the insulin product is prescribed to treat an individual diagnosed with diabetes or prescribed for the purpose of preventing the exacerbation of diabetes or the development of a secondary condition.

II. BACKGROUND

A. Preventive Care

Section 223 of the Code permits eligible individuals to establish tax-favored

[1] For purposes of this notice, a "male condom" refers to an external condom and a "female condom" refers to an internal condom.

Health Savings Accounts (HSAs). Among the requirements to qualify as an eligible individual under section 223(c)(1) is that the individual be covered under an HDHP and have no disqualifying health coverage. As defined in section 223(c)(2), an HDHP is a health plan that satisfies certain requirements, including requirements with respect to minimum deductibles and maximum out-of-pocket expenses.

Generally, under section 223(c)(2)(A), an HDHP is not permitted to provide benefits for any year until the minimum deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. Under section 223(c)(2)(C), "[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1861 of the Social Security Act, except as otherwise provided by the Secretary)." Therefore, an HDHP may provide preventive care benefits without a deductible, or with a deductible below the minimum annual deductible otherwise required by section 223(c)(2)(A). To be a preventive care benefit as defined for purposes of section 223, the benefit must either be described as preventive care for purposes of section 1861 of the Social Security Act (SSA) or be determined to be preventive care in guidance issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS).[2]

Section 2713 of the Public Health Service Act[3] (PHS Act) requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage[4] to provide benefits for certain preventive services without imposing cost-sharing requirements. Notice 2013-57, 2013-40 IRB 293, provides that any item or service that is a preventive service under section 2713 of the PHS Act will also be treated as preventive care under section 223(c)(2)(C) of the Code. With respect to women,[5] preventive services under section 2713 of the PHS Act include those provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA-Supported Guidelines).

Notice 2004-23, 2004-15 IRB 725, provides that preventive care under section 223(c)(2)(C) includes, among other types of care, "Breast Cancer (e.g., Mammogram)" screening services.

Notice 2018-12, 2018-12 IRB 441, states that, absent further guidance to the contrary, benefits for male sterilization or male contraceptives would not be considered preventive care. The notice bases its reasoning on the fact that, at the time of publication of the notice: (1) male sterilization and male contraceptives were not preventive care under the SSA; (2) HRSA-Supported Guidelines did not provide for coverage of benefits or services relating to a man's reproductive capacity, such as vasectomies and condoms; and (3) no applicable guidance issued by the Treasury Department or the IRS provided for the treatment of male sterilization or male contraceptives as preventive care within the meaning of section 223(c)(2)(C).

B. Oral Contraceptives

The HRSA-Supported Guidelines include the full range of U.S. Food and Drug Administration (FDA)-approved, -granted, or -cleared contraceptives, including those currently listed in the FDA's Birth Control Guide, such as "oral contraceptives (progestin only)" and "emergency contraception (levonorgestrel)."[6] An OTC progestin-only daily oral contraceptive was recently approved by the Food and Drug Administration (FDA) and is currently available.[7] Some emergency contraceptives also are available as OTC products (e.g., levonorgestrel). Additional recommended preventive products may also become available as OTC products in the future. The HRSA-Supported Guidelines relating to contraceptives have been updated and no longer contain the "as prescribed" restriction they once did.

C. Male Condoms

Notice 2024-71, 2024-44 IRB 1026, provides a safe harbor, under which the Treasury Department and the IRS will treat amounts paid for condoms as amounts paid for medical care under section 213(d). While the HRSA-Supported Guidelines previously included only female condoms, the HRSA-Supported Guidelines were expanded in 2021 after Notice 2018-12 was published to encompass contraceptives that are not female-controlled, such as male condoms.[8] However, the expanded HRSA-Supported Guidelines made no changes to the recommendations regarding male sterilization and continue not to include male sterilization.

D. Breast Cancer Screening

Notice 2004-23 provides that breast cancer screening is treated as preventive care under section 223(c)(2)(C) but provides a "mammogram" as the only listed example of such screenings. Breast cancer screening recommended with an "A" or

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[2] The determination of whether an item or service is preventive care for these purposes is separate and distinct from the determination of whether an amount paid for an item or service is medical care under section 213(d) of the Code as an amount paid for the prevention of disease. *See* Rev. Rul. 79-66, 1979-1 C.B. 114; *Daniels v. Commissioner,* 41 T.C. 324 (1963); and *Stringham v. Commissioner,* 12 T.C. 580 (1949) *acq.*, 1950-2 C.B. 4, *aff'd per curiam,* 183 F.2d 579 (6th Cir. 1950).

[3] *See* 42 U.S.C. chapter 6A.

[4] The Department of Health and Human Services, the Department of Labor, and the Treasury Department (collectively, the Departments) share interpretive jurisdiction over section 1251 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (2010) (ACA), as amended, which generally provides that certain group health plans and health insurance coverage existing as of March 23, 2010, the date of enactment of ACA (referred to collectively in the statute as grandfathered health plans), are subject to only certain provisions of ACA.

[5] The references to "women" in this notice are not limited based on sex assigned at birth, gender identity, or gender of the individual otherwise recorded by the plan or issuer in accordance with FAQs about Affordable Care Act implementation Part XXVI (May 11, 2015), Q5, available at *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf.*

[6] https://www.hrsa.gov/womens-guidelines.

[7] On July 13, 2023, the FDA announced that it had approved a progestin-only birth control pill as the first daily oral contraceptive for use in the United States available without a prescription by a health care provider. *See* FDA Approves First Nonprescription Daily Oral Contraceptive, July 13, 2023, *https://www.fda.gov/news-events/press-announcements/fda-approves-first-non-prescription-daily-oral-contraceptive*. Progestin-only oral contraceptives are a product that is already available in a prescription form and are a category of contraceptives listed in the HRSA-Supported Guidelines.

[8] HRSA made this change to allow women to purchase male condoms for pregnancy prevention. *See* 86 FR 59741, 59742 (Oct. 28, 2021).

"B" rating by the United States Preventive Services Task Force (USPSTF), which must be covered without cost-sharing for certain individuals under section 2713 of the PHS Act, generally is limited to mammography.[9]

E. Continuous Glucose Monitors and Insulin

Notice 2019-45 provides that specified services and items, including glucometers and insulin, are treated as preventive care under section 223(c)(2)(C). However, the notice also provides that specified services and items are treated as preventive care only when prescribed to treat an individual diagnosed with the specified associated chronic condition (diabetes in the case of glucometers and insulin), and only when prescribed for the purpose of preventing the exacerbation of the chronic condition or the development of a secondary condition.

While Notice 2019-45 provides that glucometers are treated as preventive care, it does not directly refer to continuous glucose monitors, which similarly measure glucose levels.

Section 11408 of the Inflation Reduction Act of 2022[10] amended section 223 of the Code with respect to insulin products effective for plan years beginning after December 31, 2022, by adding a new section 223(c)(2)(G) to provide that a plan shall not fail to be treated as an HDHP by reason of failing to have a deductible for selected insulin products described in that section.

III. QUESTIONS AND ANSWERS

A. Oral Contraceptives

Q-1. Will a health plan fail to qualify as an HDHP under section 223(c)(2) of the Code merely because it provides benefits for OTC oral or emergency contraceptives without a prescription before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A)?

A-1. No. Regardless of whether OTC contraceptives without a prescription are preventive care required to be covered without cost sharing under section 2713 of the PHS Act, the Treasury Department and the IRS have determined that it is not appropriate to distinguish OTC oral contraceptives that are now available from other types of contraceptives that are considered to be preventive care for purposes of the safe harbor for the absence of a preventive care deductible under section 223(c)(2)(C).

Consequently, preventive care for purposes of section 223(c)(2)(C) includes all benefits for OTC oral contraceptives for a covered individual potentially capable of becoming pregnant, including, but not limited to, OTC birth control pills and emergency contraception, regardless of whether they are purchased with a prescription. Accordingly, a health plan will not fail to qualify as an HDHP under section 223(c)(2) merely because it provides benefits for those contraceptives before such an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A). This guidance is effective for plan years (in the individual market, policy years) that begin on or after December 30, 2022.

B. Male Condoms

Q-2. Will a health plan fail to qualify as an HDHP under section 223(c)(2) of the Code merely because it provides benefits for male condoms (with or without a prescription) before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A)?

A-2. No. Notice 2024-71, as well as the expansion of the HRSA-Supported Guidelines to encompass male condoms as described above in paragraph II.C. of the Background section of this notice, has caused the Treasury Department and the IRS to revisit the position on male contraceptives as set forth in Notice 2018-12.

Upon reconsideration, the Treasury Department and the IRS have determined that preventive care for purposes of section 223(c)(2)(C) includes all benefits for male condoms, regardless of whether they are purchased with a prescription and regardless of the gender of the individual covered under the HDHP who purchases them. Accordingly, a health plan will not fail to qualify as an HDHP under section 223(c)(2) merely because it provides benefits for male condoms (with or without a prescription) before an individual satisfies the minimum deductible for an HDHP under section 223(c)(2)(A).[11] This guidance is effective for plan years (in the individual market, policy years) that begin on or after December 30, 2022.

C. Breast Cancer Screening

Q-3. Will a health plan fail to qualify as an HDHP under section 223(c)(2) of the Code merely because it provides benefits for breast cancer screening other than mammograms before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A)?

A-3. No. The Treasury Department and the IRS have determined that, because breast cancer screening may include imaging other than mammograms,[12] the reference in Notice 2004-23 to breast cancer screening should be changed to "Breast Cancer (e.g., Mammograms, Magnetic Resonance Imaging (MRIs), Ultrasounds, and similar breast cancer screening services)." This language change is effective

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[9] https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/breast-cancer-screening and https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/breast-cancer-screening-2002 (in effect until January 1, 2026). FAQs about Affordable Care Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 59 (July 28, 2022), Q7, available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-59 and https://www.cms.gov/files/document/faqs-part-59.pdf, provides that items and services recommended with an "A" or "B" rating by the USPSTF on or after March 23, 2010, will be treated as preventive care for purposes of Code section 223(c)(2)(C), regardless of whether these items and services must be covered, without cost sharing, under PHS Act section 2713. The HRSA-Supported Guidelines likewise mention only "mammography screening."

[10] Pub. L. 117-169, § 11408, 136 Stat. 1818, 1905 (Aug. 16, 2022).

[11] While this guidance applies to male condoms, it does not apply to any other male contraceptives, such as male sterilization.

[12] According to the American Cancer Society, individuals who are at high risk for breast cancer based on certain factors should get a breast MRI in addition to a mammogram. *See* https://www.cancer.org/cancer/types/breast-cancer/screening-tests-and-early-detection/american-cancer-society-recommendations-for-the-early-detection-of-breast-cancer.html. Also, ultrasound can be helpful in individuals with dense breast tissue, which can make it hard to see abnormal areas on mammograms. *See* https://www.cancer.org/cancer/types/breast-cancer/screening-tests-and-early-detection/breast-ultrasound.html.

as of the date of publication of Notice 2004-23 (April 12, 2004).

D. Continuous Glucose Monitors and Insulin

Q-4. Will a health plan fail to qualify as an HDHP under section 223(c)(2) of the Code merely because it provides benefits for continuous glucose monitors before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A)?

A-4. Generally, no. This notice clarifies that in accordance with Notice 2019-45 continuous glucose monitors are preventive care for purposes of section 223(c)(2)(C) in the same circumstances as other glucometers if the continuous glucose monitor is measuring glucose levels using a similar detection method or mechanism to other glucometers (*i.e.*, piercing the skin).[13]

Consequently, this notice clarifies that preventive care for purposes of section 223(c)(2)(C) includes all benefits for continuous glucose monitors subject to the conditions in the preceding paragraph. Accordingly, a health plan will not fail to qualify as an HDHP under section 223(c)(2) merely because it provides such benefits before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A). This guidance is effective as of the effective date of Notice 2019-45 (July 17, 2019).

Some continuous glucose monitors may have additional medical functions, such as insulin delivery, or non-medical functions. If so, those functions also would need to be preventive care in order for an HDHP to cover any benefits for the continuous glucose monitor before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A). A continuous glucose monitor that both monitors and provides insulin may be treated as preventive care as explained in Q&A-5 of this notice because it is a device for delivering insulin. If a continuous glucose monitor provides additional medical or non-medical functions that are not preventive care (other than minor functions, such as clock and date functions), however, then the HDHP may not cover the continuous glucose monitor before an individual satisfies the minimum annual deductible for an HDHP.

Q-5. May an HDHP provide benefits for the selected insulin products described in section 223(c)(2)(G) of the Code, as added by section 11408 of the Inflation Reduction Act of 2022, prior to satisfying the minimum annual deductible for an HDHP under section 223(c)(2)(A), effective for plan years after December 31, 2022?

A-5. Yes. This notice clarifies that an HDHP may provide benefits for the selected insulin products described in section 223(c)(2)(G) before an individual satisfies the minimum annual deductible for an HDHP under section 223(c)(2)(A) without regard to whether the insulin product is prescribed to treat an individual diagnosed with diabetes or prescribed for the purpose of preventing the exacerbation of diabetes or the development of a secondary condition. The Treasury Department and the IRS interpret section 223(c)(2)(G) to include any devices used to administer or deliver the selected insulin products described in that section. This guidance is effective for plan years (in the individual market, policy years) beginning after December 31, 2022.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2004-23 is clarified by noting the safe harbor for absence of a deductible for breast cancer screening.

Notice 2018-12 is superseded with respect to the guidance regarding male condoms.

Notice 2019-45 is clarified and expanded by noting the safe harbor for absence of a deductible for continuous glucose monitors and for certain insulin products pursuant to the Inflation Reduction Act of 2022.

V. DRAFTING INFORMATION

The principal authors of this notice are Jennifer Friedman and William Fischer of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), though other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact William Fischer at (202) 317-5500 (not a toll-free number).

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[13] The FDA has warned consumers, patients, caregivers, and health care providers of risks related to using smartwatches or smart rings that claim to measure blood glucose levels without piercing the skin. These devices are different than smartwatch applications that display data from FDA-authorized blood glucose measuring devices that pierce the skin, like continuous glucose monitoring devices. The FDA has not authorized, cleared, or approved any smartwatch or smart ring that is intended to measure or estimate blood glucose values on its own. *See* https://www.fda.gov/medical-devices/safety-communications/do-not-use-smartwatches-or-smart-rings-measure-blood-glucose-levels-fda-safety-communication.

NOTE. This revenue procedure will be reproduced as the next revision of IRS Publication 1167, General Rules and Specifications for Substitute Forms and Schedules.

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Part 1
Introduction to Substitute Forms

Section 1.1 – Overview of Revenue Procedure 2024-33

1.1.1
Purpose

The purpose of this revenue procedure is to provide guidelines and general requirements for the development, printing, and approval of the 2024 substitute tax forms. Approval will be based on these guidelines. After review and approval, submitted forms will be accepted as substitutes for official IRS forms.

1.1.2
Unique Forms

Certain unique specialized forms require the use of other publications that supplement this publication. See *Part 4*.

1.1.3
Scope

The IRS accepts quality substitute tax forms that are consistent with the official forms and have no adverse impact on processing. The IRS Substitute Forms Program (the Program) administers the formal acceptance and processing of these forms nationwide. While this Program deals with paper documents, it also reviews for approval other processing and filing forms used in electronic filing.

Only those substitute forms that fully comply with these requirements are acceptable. This revenue procedure is updated as required to reflect pertinent tax year form changes and to meet processing and/or legislative requirements.

1.1.4
Forms Covered by This Revenue Procedure

The following types of forms are covered by this revenue procedure.

- IRS tax forms and their related schedules.
- Worksheets as they appear in the instructions.
- Applications for permission to file returns electronically and forms used as required documentation for electronically filed returns.
- Powers of Attorney.
- Over-the-counter estimated tax payment vouchers.
- Forms and schedules relating to partnerships, exempt organizations, and employee plans.

1.1.5
Forms Not Covered by This Revenue Procedure

The following types of forms are not covered by this revenue procedure. Refer to the publication for questions.

- W-2 and W-3. See Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
- W-2c and W-3c. See Pub. 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

- 941 and attached schedules. See Pub. 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.
- 1096, 1097-BTC, 1098 series, 1099 series, 3921, 3922, 5498 series, W-2G, and 1042-S. See Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
- 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C. See Pub. 5223, General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C.
- 8027. See Pub. 1239, Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips.
- Forms 1040-ES (OCR) and 1041-ES (OCR), which may not be reproduced.
- Form 5500 series (for more information on these forms, go to the Department of Labor website at https://www.efast.dol.gov).
- Forms used internally by the IRS.
- State tax forms.
- Forms developed outside the IRS.

1.1.6
Other Information Not Covered by This Revenue Procedure

The following information is not covered by this revenue procedure.

- Requests for information or documentation initiated by the IRS.
- General Instructions and Specific Instructions (these are not reviewed by the Program).

Section 1.2 – IRS Contacts

1.2.1
Where To Send Substitute Forms

Send your substitute forms for **approval** to the following offices. Do not send forms with taxpayer data.

Form	Office and Address
5500	Check EFAST2 information at the Department of Labor website at https://www.efast.dol.gov.
Software developer vouchers (see Sections 2.3.7–2.3.9)	Internal Revenue Service Attn: Jason Lane 3211 S. Northpointe Dr. Santa Fe Bldg. Rm 3018 Fresno, CA 93725 Jason.L.Lane@irs.gov
ACA Forms 1094-B, 1095-B, 1094-C, and 1095-C (for more information, see Pub. 5223), and Schedule K-1 forms must be emailed for scannability testing.	scrips@irs.gov

Form	Office and Address
Schedule K-1 2-D bar-coded forms	For mailing addresses for sending Schedule K-1 2-D bar-coded forms for testing, see *Section 7.1.6*.
All others covered by this publication (see *Section 1.1.4*)	Internal Revenue Service Attn: Substitute Forms Program SE:W:CAR:MP:P:TP:TP ATSC 4800 Buford Highway Mail Stop: 061-N Chamblee, GA 30341 substituteforms@irs.gov

Section 1.3 – What's New

1.3.1 What's New

The following changes have been made to this year's revenue procedure.

- **.01 Editorial changes.** We made editorial changes as needed and eliminated repetitive information.
- **.02 Form 8717 can no longer be submitted as a substitute form.** Form 8717 must be submitted electronically through https://www.pay.gov. For more information about electronically submitting Form 8717, go to https://www.irs.gov/form8717.

Section 1.4 – Definitions

1.4.1 Substitute Form

A tax form (or related schedule) that differs in any way from the official version and is intended to replace the form that is printed and distributed by the IRS. This term also covers those approved substitute forms exhibited in this revenue procedure.

1.4.2 Printed/Preprinted Form

A form produced using conventional printing processes or a printed form which has been reproduced by photocopying or a similar process.

1.4.3 Preprinted Pin-Fed Form

A printed form that has marginal perforations for use with automated and high-speed printing equipment.

1.4.4 Computer-Prepared Substitute Form

A preprinted form in which the taxpayer's tax entry information has been inserted by a computer, a computer printer, or other computer-type equipment.

1.4.5
Computer-Generated Substitute Tax Return or Form

A tax return or form that is entirely designed and printed using a computer printer on plain white paper. This return or form must conform to the physical layout of the corresponding IRS form, although the typeface may differ. The text should match the text on the officially printed form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis.

Exception. All jurats (perjury statements) must be reproduced verbatim.

1.4.6
Manually Prepared Form

A preprinted reproduced form in which the taxpayer's tax entry information is entered by an individual using a pen, a pencil, or other nonautomated equipment.

1.4.7
Graphics

Parts of a printed tax form that are not tax amount entries or required text. Examples of graphics are line numbers, captions, shadings, special indicators, borders, rules, and strokes created by typesetting, photographics, photocomposition, etc.

1.4.8
Acceptable Reproduced Form

A legible photocopy or an exact replica of an original form.

1.4.9
Supporting Statement (Supplemental Schedule)

A document providing detailed information to support a line entry on an official or approved substitute form and filed with (attached to) a tax return.

Note. A supporting statement is not a tax form and does not take the place of an official form.

1.4.10
Specific Form Terms

The following specific terms are used throughout this revenue procedure in reference to all substitute forms: format, sequence, line reference, item caption, and data entry field.

1.4.11
Format

The overall physical arrangement and general layout of a substitute form.

1.4.12
Sequence

Sequence is an integral part of the total format requirement. The substitute form should show the same numeric and logical placement order of data as shown on the official form.

1.4.13
Line Reference

The line numbers, letters, or alphanumerics used to identify each captioned line on an official form. These line references are printed to the immediate left of each caption and/or data entry field.

1.4.14
Item Caption

The text on each line of a form, which identifies the data required.

1.4.15
Data Entry Field

Designated areas for the entry of data such as dollar amounts, quantities, responses, and checkboxes.

1.4.16
Advance Draft

A draft version of a new or revised form may be posted to the IRS website (https://www.irs.gov/draftforms) for information purposes. Substitute forms may be submitted based on these advance drafts, but any submitter that receives forms approval based on these early drafts is responsible for monitoring and revising forms to reflect any revisions in the final forms provided by the IRS.

1.4.17
Approval

Generally, approval could be in writing or assumed after 20 business days from our receipt for forms that have not been substantially changed by the IRS. This does not apply to newly created or substantially revised IRS forms. However, the Program reserves the right to notify vendors of any inaccuracies even after 20 business days have lapsed.

1.4.18
National Association of Computerized Tax Processors (NACTP)

The NACTP is a nonprofit association that represents tax processing software and hardware developers, electronic filing processors, tax form publishers, tax processing service bureaus, and payroll processors. The association promotes standards in tax processing to advance efficient and effective tax filing. For more information, go to https://www.nactp.org.

Section 1.5 – Agreement

1.5.1
Important Stipulation of This Revenue Procedure

Any person or company who uses substitute forms and makes all or part of the changes specified in this revenue procedure agrees to the following stipulations.

- The IRS presumes that any required changes are made in accordance with these revenue procedures and will not be disruptive to the processing of the tax return.
- Should any of the changes be disruptive to the IRS's processing of the tax return, the person or company agrees to accept the determination of the IRS as to whether the form may continue to be filed.
- The person or company agrees to work with the IRS in correcting noted deficiencies. Notification of deficiencies may be made by any combination of letter, email, or phone contact and may include the request for the resubmission of unacceptable forms.

1.5.2
Response Policy and Stipulations

The Program will email confirmation of receipt of your forms submission, if possible. Even if you do not receive emailed confirmation of receipt, you will receive an emailed "submission receipt," which will provide feedback on your submission. If the Program anticipates problems in completing the review of your submission within the 20-business-day period, the Program will send an interim email notifying you of the extended period for review.

Once the substitute forms have been approved by the Program, you can release them after the final versions of the forms have been issued by the IRS. Before releasing the forms, you are responsible for updating forms approved as draft and for making form changes requested.

The policy has the following stipulations.

- This 20-business-day policy applies to electronic submissions only. It does not apply to substitute submissions mailed to the Program.

- The policy applies to submissions of 15 (optimal) or fewer items and submissions containing 75 pages or less. Submissions of more than 15 items may require additional review time.
- If you send a large number of submissions within a short period of time, processing may be delayed.
- Delays in processing could occur if the Program finds significant errors in your submission or has experienced an increase in submissions. The Program will send you an interim email in this case.
- Any anticipated problems in processing your submission within the 20-business-day period will generate an interim email on or about the 15th business day.
- If any significant inaccuracies are discovered after the 20-business-day period, the Program reserves the right to inform you and will require that changes be made to correct the inaccuracies.
- The policy does not apply to substantially revised forms or to new forms created by the IRS for which you have already made an initial submission.

Part 2
General Guidelines for Submissions and Approvals

Section 2.1 – General Specifications for Approval

2.1.1
Overview

If you produce any substitute tax forms that fully comply or follow the changes specifically outlined by the Program, then you can generate your own substitute forms without further approval. Also, if your substitutes have received approval in the past, and there are no substantial formatting or text changes for the tax year, then changes can be made without additional approval. If your changes are more extensive, you must get IRS approval before using substitute forms. More extensive changes include different font style; decreasing or increasing the font size of caption titles; adjusting or omitting format/layout elements; changing page orientation; and repositioning line items, tables, and legends.

2.1.2
Email Submissions

The Program accepts submissions of substitute forms for review and approval via email. The email address is substituteforms@irs.gov. Include the term “PDF Submissions” on the subject line.

Follow these guidelines.

- The emailed submission should include all the forms you wish to submit in one Portable Document Format (PDF) file. Do not email or attach each form individually.
- The emailed submission should include a maximum of 3 PDF files to include a checksheet, a cover letter or accompanying statement, and a single PDF file that includes all of the forms listed on your checksheet, cover letter, or accompanying statement.
- A submission should contain a maximum of 15 forms.
- An approval checksheet listing the forms you are submitting should always be included in the PDF file along with the forms. Excluding the checksheet can slow the reviewing process

down, which can result in a delayed response to your submission. See a sample checksheet in *Exhibit B*.

- Optimize PDF files before submitting.
- The maximum allowable email attachment is 2.5 megabytes.
- The Program accepts zip files.
- To alleviate delays during the peak time of September through December, submit advance draft forms as early as possible.

If the guidelines are not followed, you may need to resubmit.

Emailing PDF submissions will not expedite review and approval. Submitting your substitute forms package via email is the preferred and suggested method for submitting forms for review. If, for some reason, you are not able to email your submission(s), you can mail your submission(s) to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:P:TP:TP
ATSC
4800 Buford Highway
Mail Stop: 061-N
Chamblee, GA 30341

2.1.3
Expediting the Process

Follow these basic guidelines for expediting the process.

- Always include a checksheet for the Program's response.
- Include an accompanying statement identifying most, if not all, of the deviations your substitute forms may have from the official IRS versions.
- Follow the guidance in this publication for general substitute form guidelines. Follow the guidance in specialized publications produced by the Program for other specific forms.
- To spread out the workload, send in draft versions of substitute forms when they are posted. **Note.** Be sure to make any changes to approved drafts before releasing final versions.

2.1.4
Schedules

Some schedules are considered to be an integral part of a complete tax return and must be submitted as part of the form. Other schedules may be submitted separately and do not need to be included with the tax form.

2.1.5
Examples of Schedules That Must Be Submitted With the Return

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is an example of this situation. For the Form 706 to be considered for approval, all schedules that affect or are applicable to any election or position taken by the filer, as well as all applicable schedules that affect the tax, must be submitted.

2.1.6
Examples of Schedules That Can Be Submitted Separately

Schedules C, D, and E for Form 1040, U.S. Individual Income Tax Return, or Form 1040-SR, U.S. Tax Return for Seniors, are examples of schedules that can be submitted separately. Although printed by the IRS as a supplement to Form 1040 or 1040-SR, these schedules are not required to be submitted for approval with Form 1040 or 1040-SR. These schedules may be separated from Form 1040 or 1040-SR and submitted as substitute forms.

2.1.7
Use and Distribution of Unapproved Forms

The IRS is continuing a program to identify and contact tax return preparers, forms developers, and software publishers who use or distribute unapproved forms that do not conform to this revenue procedure. The use of unapproved forms hinders the processing of the returns.

Section 2.2 – Highlights of Permitted Changes and Requirements

2.2.1
Methods of Reproducing IRS Forms

There are methods of reproducing IRS printed tax forms suitable for use as substitutes without prior approval.

- You can photocopy most tax forms and use them instead of the official ones. The entire substitute form, including entries, must be legible.
- You can reproduce any current tax form as cut sheets, snap sets, and marginally punched, pin-fed forms as long as you use an official IRS version as the master copy.
- You can reproduce a form that requires a signature as a valid substitute form. Many tax forms (including returns) have a taxpayer signature requirement as part of the form layout. The jurat/perjury statement/signature line areas must be retained and worded exactly as on the official form. The requirement for a signature, by itself, does not prohibit a tax form from being properly computer generated.

Section 2.3 – Vouchers

2.3.1
Overview

All payment vouchers (Forms 940-V, 941-V, 943-V, 944-V, 945-V, 1040-ES, 1040-V, 1041-V, and 2290-V) must be reproduced in conjunction with their forms. Substitute vouchers must be the same size as the officially printed vouchers. Vouchers that are prepared for printing on a laser printer may include a scan line.

2.3.2
Scan Line Specifications

	NNNNNNNNN	AA	XXXX	NN	N	NNNNNN	NNN
Item:	A	B	C	D	E	F	G

A. Social Security Number/Employer Identification Number/Individual Taxpayer Identification Number/Adoption Taxpayer Identification Number (SSN/EIN/ITIN/ATIN) has 9 numeric (N) spaces.

B. Check Digits have 2 alpha (A) spaces.

C. Name Control has 4 alphanumeric (X) spaces.

D. Master File Tax (MFT) Code has 2 numeric (N) spaces (see Section 2.3.3).

E. Taxpayer Identification Number (TIN) Type has 1 numeric (N) space (see Section 2.3.4).

F. Tax Period has 6 numeric (N) spaces in year/month format (YYYYMM).

G. Transaction Code has 3 numeric (N) spaces.

2.3.3
MFT Code

Code Number for Forms:

- 1040 (family) – 30,
- 940 – 10,
- 941 – 01,
- 943 – 11,
- 944 – 14,
- 945 – 16,
- 1041-V – 05,
- 2290 – 60, and
- 4868 – 30.

2.3.4
TIN Type

Type Number for:

- Form 1040 (family) and Form 4868 – 0; and
- Forms 940, 941, 943, 944, 945, 1041-V, and 2290 – 2.

2.3.5
Voucher Size

The voucher size must be exactly 8.0″ x 3.25″ (Forms 1040-ES and 1041-ES must be 7.625″ x 3.0″). The document scan line must be vertically positioned 0.25 inch from the bottom of the scan line to the bottom of the voucher. The last character on the right of the scan line must be placed 3.5 inches from the right leading edge of the document. The minimum required horizontal clear space between characters is 0.014 inch. The line to be scanned must have a clear band 0.25 inch in height from top to bottom of the scan line, and from border to border of the document. “Clear band” means no printing except for dropout ink.

2.3.6
Print and Paper Weight

Vouchers must be imaged in black ink using OCR A, OCR B, or Courier 10. These fonts may not be mixed in the scan line. The horizontal character pitch is 10 CPI. The preferred paper weight is 20 to 24 pound OCR bond.

2.3.7
Specifications for Software Developers

Certain vouchers may be reproduced for use in the IRS lockbox system. These include the 1040-V, 1040-ES, 1041-V, 94X series, and 2290 vouchers. Software developers must follow these specific guidelines to produce scannable vouchers strictly for lockbox purposes. Also see *Exhibit A*.

- The total depth must be 3.25 inches.
- The scan line must be 0.5 inch from the bottom edge and 1.75 inches from the left edge of the voucher and left justified.
- Software developers’ vouchers must be 8.5 inches wide (instead of 8 inches with a cut line). Therefore, no vertical cut line is required.

- Scan line positioning must be exact.
- Do not use the over-the-counter format voucher and add the scan line to it.
- All scanned data must be in 12-point OCR A font.
- The 4-digit NACTP ID code or IRS source code should be placed under the box designated for the payment dollar amount.
- Windowed envelopes must not display the scan line in order to avoid disclosure and privacy issues.

Note. All software developers must ensure that their software uses OCR A font so taxpayers will be able to print the vouchers in the correct font.

2.3.8
Specific Line Positions

Follow these line specifications for entering taxpayer data in the lockbox vouchers.

	Start Row	Start Column	Width	End Column
Line Specifications for Taxpayer Data:				
Taxpayer Name	56	6	36	41
Taxpayer Address, Apt.	57	6	36	41
Taxpayer City, State, ZIP	58	6	36	41
Foreign Country Name	59	6	36	41
Foreign Province/County	60	6	17	22
Foreign Postal Code	60	26	16	41
Line Specifications for Mail-To Data:				
Mail Name	56	43	38	80
Mail Address	57	43	38	80
Mail City, State, ZIP	58	43	38	80
Line Specifications for:				
Scan Line	63	26	n/a	n/a

2.3.9
How To Get Approval

Send an approval sheet with each form type for IRS signature to Jason Lane at Jason.L.Lane@irs.gov. You should include in the email an example of each type of voucher the site will be testing. **Note.** Do not mail any test vouchers to Jason Lane.

You are required to send 25 voucher samples of each form in PDF format by December 6, 2024. You should email the test vouchers to raul.t.mariduena@jpmorgan.com. You can also print the vouchers and send them to his mailing address at:

JP Morgan Chase
Attn: Raul Mariduena
830 Tyvola Road, Suite 114
Charlotte, NC 28217

For further information, contact Jason Lane at Jason.L.Lane@irs.gov, or at 559-550-8740 (not toll free).

Section 2.4 – Restrictions on Changes

2.4.1
What You Cannot Do to Forms Suitable for Substitute Tax Forms

You cannot, without prior IRS approval, change any IRS tax form or use your own (nonapproved) versions including graphics, unless specifically permitted by this revenue procedure. See *Sections 2.5.7* through *2.5.11*.

You cannot adjust any of the graphics on Form 1040 or 1040-SR (except in those areas specified in *Part 5* of this revenue procedure) without prior approval from the Program.

You cannot rearrange or redistribute data entry fields, and/or allow data entry fields to flow from one page onto the next (that is, each page of a substitute form must contain the exact number of data entry fields as there are on the official IRS form). The order of information on the substitute form must be identical to the IRS version of the form. Publications for specific substitute forms will state allowances for those respective forms.

Note. The 20-business-day turnaround policy may not apply to extensive changes.

Section 2.5 – Guidelines for Obtaining IRS Approval

2.5.1
Basic Requirements

Preparers who submit substitute privately designed, privately printed, computer-generated, or computer-prepared tax forms must develop these substitutes using the guidelines established in this part. These forms, unless there is an exception outlined by this revenue procedure, must be approved by the IRS before being filed.

2.5.2
Conditional Approval Based on Advance Drafts

The IRS cannot grant final approval of your substitute form until the official form has been published. However, the IRS posts advance draft forms on its website at https://www.irs.gov/draftforms.

Submission of proposed substitutes of these advance draft forms is encouraged, and conditional approval will be granted based solely on these early drafts. These advance drafts are subject to significant change before forms are finalized. If these advance drafts are used as the basis for your substitute forms, you will be responsible for subsequently updating your final forms to agree with the final official version. These revisions need not be resubmitted for further approval.

Note. Approval of forms based on advance drafts will not be granted after the final version of an official form is published.

2.5.3
Submission Procedures

Follow these general guidelines when submitting substitute forms for approval.

- Any alteration of forms must be within the limits acceptable to the IRS. It is possible that, from one filing period to another, a change in law or a change in internal need (processing, audit, compliance, etc.) may change the allowable limits for the alteration of the official form.

- When approval of any substitute form (other than those exceptions specified in *Part 1*, *Section 1.2*) is requested, a sample of the proposed substitute form should be emailed for consideration to the Program at the address shown in *Section 1.2.1*.
- Schedules and forms (for example, Forms 3468, 4136, etc.) that can be used with more than one type of return (for example, Forms 1040, 1040-SR, 1041, 1120, etc.) should be submitted only once for approval, without regard to the number of different tax returns with which they may be associated. Also, all pages of multi-page forms or returns should be submitted in the same package.

2.5.4
Approving Offices

Because only the Program is authorized to approve substitute forms, unnecessary delays may occur if forms are sent to the wrong office. You may receive an interim letter about the delay. The Program may then coordinate the response with the originator responsible for revising that particular form. Such coordination may include allowing the originator to officially approve the form. No IRS office is authorized to allow deviations from this revenue procedure.

2.5.5
IRS Review of Software Programs, etc.

The IRS does not review or approve the logic of specific software programs, nor does the IRS confirm the calculations on the forms produced by these programs. The accuracy of the program remains the responsibility of the software package developer, distributor, or user.

The Program is primarily concerned with the pre-filing quality review of the final forms that are expected to be processed by IRS field offices. For this purpose, you should submit forms without including any taxpayer information such as names, addresses, monetary amounts, etc.

If the software used is programmed to produce copies with populated fields, then you must use dummy information. This will allow the Program to review and provide feedback or approval. Vendors should use “0” for all number values and “X” for any information that requires alpha characters.

2.5.6
When To Send Proposed Substitutes

Proposed substitutes, which are required to be submitted per this revenue procedure, should be sent as much in advance of the filing period as possible. This is to allow adequate time for analysis and response.

2.5.7
Accompanying Statement

When submitting sample substitutes, you should include an accompanying statement that lists each form number and its changes from the official form (position, arrangement, appearance, line numbers, additions, deletions, etc.). With each of the items, you should include a detailed reason for the change.

When requesting approval, include a checksheet. Checksheets expedite the approval process. The checksheet may look like the example in *Exhibit B* displayed in the back of this revenue procedure or may be one of your own design. Include your email address on the checksheet.

2.5.8
Approval/Nonapproval Notice

The Program will email the checksheet or an approval letter to the originator, unless:

- The requester has asked for a formal letter, or
- Significant corrections to the submitted forms are required.

Notice of approval may impose qualifications before using the substitutes. Notices of unapproved forms may specify the changes required for approval and require resubmission of the form(s) in question. When appropriate, you will be contacted by telephone.

2.5.9
Duration of Approval

Most signature tax returns and many of their schedules and related forms have the tax year printed in the upper right corner. Approvals for these annual forms are usually good for 1 calendar year (January through December of the year of filing). Quarterly tax forms in the 94X series and Form 720 require approval for any quarter in which the form has been revised.

Because changes are usually made to an annual form every year, each new filing season generally requires a new submission of a substitute form. Very rarely is updating the preprinted year the only change made to an annual form. However, if no significant content, formatting, or layout changes were made to a tax form, then review and approval received for the prior tax year can be carried over into the current tax year.

2.5.10
Limited Continued Use of an Approved Change

Limited changes approved for one tax year may be allowed for the same form in the following tax year. Examples are the use of abbreviated words, revised form spacing, compressed text lines, shortened captions, etc., which do not change the integrity of lines or text on the official forms.

If the vendor or filer makes substantial changes to the form, new substitutes must be submitted for approval. If the vendor or filer makes only minor editorial changes to the form, or makes any changes that mirror changes the IRS makes to the form's official version, the new substitute does not need to be submitted for approval. It is the responsibility of each vendor who has been granted permission to produce substitute forms to monitor and revise forms to mirror any revisions to the official forms made by the IRS. If there are any questions, contact the Program.

2.5.11
When Approval Is Not Required

If you received approval for a specific change on a form last year, you may make the same change this year if the item is still present on the official form.

- The new substitute form does not have to be submitted to the IRS and approval based on that change is not required.
- However, the new substitute form must conform to the official current year IRS form in other respects, such as date, Office of Management and Budget (OMB) approval number, attachment sequence number, Paperwork Reduction Act Notice statement, arrangement, item caption, line number, line reference, data sequence, etc.
- The new substitute form must also comply with changes to the guidelines in this revenue procedure. This revenue procedure may have eliminated, added to, or otherwise changed the guideline(s) that affected the change approved in the prior year.
- An approved change is authorized only for the period from a prior tax year substitute form to a current tax year substitute form.

Exception. Forms with temporary, limited, or interim approvals (or with approvals that state a change is not allowed in any other tax year) are subject to review in subsequent years.

2.5.12
Required Copies

Generally, you must send us one copy of each form being submitted for approval. However, if you are producing forms for different computer platforms (for example, Microsoft vs. Apple), different tax preparation software (for example, TurboTax® vs. TaxSlayer®), or different types of printers (for example, inkjet vs. impact), and these forms differ **significantly** in appearance, submit one copy for each type of platform, tax preparation software, or printer.

2.5.13
Requestor's Responsibility

Following receipt of an initial approval for a substitute forms package or a software output program to print substitute forms, it is the responsibility of the originator (designer or distributor) to provide client firms or individuals with forms that meet the IRS's requirements for continuing acceptability. Examples of this responsibility include:

- Using the prescribed print paper, font size, legibility, state tax data deletion, etc.; and
- Informing all users of substitute forms of the legal requirements of the Paperwork Reduction Act Notice, which is generally found in the instructions for the official IRS forms.

2.5.14
Source Code

The Program will assign a unique source code to each firm that submits substitute forms for approval. This source code will be a permanent identifier that must be used on every submission by a particular firm.

The source code consists of three alpha characters and should generally be printed under or to the left of the "Paperwork Reduction Act" statement. Vendors must ensure that the source code is not printed too close to or within the left or bottom 0.5-inch margin to avoid the source code from being cut off during printing.

Section 2.6 – Office of Management and Budget (OMB) Requirements for All Substitute Forms

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2.6.1
OMB
Requirements for All Substitute Forms

There are legal requirements of the Paperwork Reduction Act of 1995 (the Act). Public Law 104-13 requires the following.

- OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in the upper right corner) the OMB number, if assigned.
- Each IRS form (or its instructions) states why the IRS needs the information, how it will be used, and whether or not the information is required to be furnished to the IRS.

This information must be provided to every user of official or substitute IRS forms or instructions.

2.6.2
Application of the Paperwork Reduction Act

On forms that have been assigned OMB numbers:

- All substitute forms must contain in the upper right corner the OMB number that is on the official form, and
- The required format is: OMB No. 1545-XXXX (preferred) or OMB # 1545-XXXX (acceptable).

2.6.3
Required Explanation to Users

You must inform the users of your substitute forms of the IRS use and collection requirements stated in the instructions for official IRS forms.

- If you provide your users or customers with the official IRS instructions, each form must retain either the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice), or a reference to it as the IRS does on the official forms (usually in the lower left corner of the forms).
- This notice reads, in part, "We ask for tax return information to carry out the tax laws of the United States. . . ."

Note. If no IRS instructions are provided to users of your forms, the exact text of the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice) must be furnished separately or on the form.

2.6.4
Finding the OMB Number and Paperwork Reduction Act Notice

The OMB number and the Paperwork Reduction Act Notice, or references to it, may be found printed on an official form (or its instructions). The number and the notice are included on the official paper format and in other formats produced by the IRS.

Part 3
Physical Aspects and Requirements

Section 3.1 – General Guidelines for Substitute Forms

3.1.1
General Information

The official form is the standard. Because a substitute form is a variation from the official form, you should know the requirements of the official form for the year of use before you modify it to meet your needs. To obtain the most frequently used tax forms, go to https://www.irs.gov/forms.

3.1.2
Design

Each form must follow the design of the official form as to format arrangement, item caption, line numbers, line references, and sequence.

3.1.3
State Tax Information Prohibited

Generally, state tax information must not appear on the federal tax return, associated form, or schedule that is filed with the IRS. Exceptions occur when amounts are claimed on, or required by, the federal return (for example, state and local income taxes on Schedule A (Form 1040)).

3.1.4
Vertical Alignment of Amount Fields

IF a form is to be...	THEN...	
manually prepared and the official IRS form still has a separate cents entry field	1.	the entry column must have a vertical line or some type of indicator in the amount field to separate dollars from cents, and
	2.	the cents column must be at least 0.3 inch wide.

IF a form is to be...	THEN...
computer generated	1. vertically align the amount entry fields where possible, and 2. use one of the following amount formats. a) 0,000,000. b) 0,000,000.00.
computer prepared	1. you may remove the vertical line in the amount field that separates dollars from cents, and 2. use one of the following amount formats. a) 0,000,000. b) 0,000,000.00.

3.1.5
Attachment Sequence Number

Many individual income tax forms have a required "attachment sequence number" located just below the year designation in the upper right corner of the form. The IRS uses this number to indicate the order in which forms are to be attached to the tax return for processing. Some of the attachment sequence numbers may change from year to year.

The following apply to computer-prepared forms.

- The sequence number may be printed in no less than 12-point boldface type and centered below the form's year designation.
- The sequence number may also be placed following the year designation for the tax form and separated with an asterisk.
- The actual number may be printed without labeling it the "Attachment Sequence Number."

3.1.6
Assembly of Forms

When developing software or forms for use by others, inform your customers/clients that the order in which the forms are arranged may affect the processing of the package. A return must be arranged in the order indicated below.

IF the form is...	THEN the sequence is...
1040 or 1040-SR	• Form 1040 or 1040-SR, and schedules and forms in attachment sequence number order.
any other tax return (Form 1120, 1120-S, 1065, 1041, etc.)	• the tax returns, directly associated schedules (Schedule D, etc.), directly associated forms, additional schedules in alphabetical order, and additional forms in numerical order.

Supporting statements should then follow in the same sequence as the forms they support. Additional information required should be attached last.

In this way, the forms are received in the order in which they must be processed. If you do not send returns to the IRS in order, processing may be delayed.

3.1.7 Paid Preparer's Information and Signature Area

On Forms 1040, 1040-SR, and 1120, and any other applicable tax forms, the "Paid Preparer Use Only" area may not be rearranged or relocated. You may, however, add three extra lines to the paid preparer's address area, and remove the horizontal rules in that area without prior approval.

3.1.8 Some Common Reasons for Requiring Changes to Substitute Forms

Some reasons that substitute form submissions may require changes include the following.

- Shading areas incorrectly.
- Failing to include a reference to the location of the Paperwork Reduction Act Notice.
- Not including parentheses for losses.
- Not including "Attach Statement" when appropriate.
- Including line references or entry spaces that do not match the official form.
- Printing text that is different from the official form.
- Altering the jurat (perjury statement).
- Having an incorrect OMB number.
- Including the IRS catalog number (Cat. No.) on the form.
- Failing to include preprinted amounts in entry fields.
- Missing IRS source code or NACTP software ID.
- Missing 3-letter FFF code on paper Form 1040 from tax software companies that participate in the IRS Free File Program.
- Incorrect dimensions.

Section 3.2 – Paper

3.2.1 Paper Content

The paper must be:

- Chemical wood writing paper that is equal to or better than the quality used for the official form,
- At least 18 pound (17″ x 22″, 500 sheets), or
- At least 50 pound offset book (25″ x 38″, 500 sheets).

3.2.2 Paper With Chemical Transfer Properties

There are several kinds of paper prohibited for substitute forms. These are:

1. Carbon-bonded paper, and
2. Chemical transfer paper except when the following specifications are met.
    a. Each ply within the chemical transfer set of forms must be labeled.

b. Only the top ply (ply one and white in color), the one that contains chemical on the back only (coated back), may be filed with the IRS.

Example. A set containing three plies would be constructed as follows: ply one (coated back), “Federal Return, File with IRS”; ply two (coated front and back), “Taxpayer’s copy”; and ply three (coated front), “Preparer’s copy.”

The file designation, “Federal Return, File with IRS” for ply one, must be printed in the bottom right margin (just below the last line of the form) in 12-point boldface type.

It is not mandatory, but recommended, that the file designation “Federal Return, File with IRS” be printed in a contrasting ink for visual emphasis.

3.2.3
Paper and Ink Color

It is preferred that the color and opacity of paper substantially duplicate that of the original form. This means that your substitute must be printed in black ink and may be on white paper or on the colored paper the IRS form is printed on. Form 1040 or 1040-SR substitute reproductions may be in black ink without the colored shading. The only exception to this rule is Form 1041-ES, which should be printed with a PMS 100 yellow shading in the color-screened area. This is necessary to assist us in expeditiously separating this form from the very similar Form 1040-ES.

3.2.4
Page Size

Substitute or reproduced forms and computer-prepared/-generated substitutes may be the same size as the official form or they may be the standard commercial size (8.5″ x 11″). The thickness of the stock cannot be less than 0.003 inch.

Section 3.3 – Printing

3.3.1
Printing Medium

The private printing of all substitute tax forms must be by conventional printing processes, photocopying, computer graphics, or similar reproduction processes.

3.3.2
Legibility

All forms must have a high standard of legibility as to printing, reproduction, and fill-in matter. Entries of taxpayer data may be no smaller than 8 points. The IRS reserves the right to reject those with poor legibility. The ink and printing method used must ensure that no part of a form (including text, graphics, data entries, etc.) develops “smears” or similar quality deterioration. This standard must be followed for any subsequent copies or reproductions made from an approved master substitute form, either during preparation or during IRS processing.

3.3.3
Type Font

Many federal tax forms are printed using Helvetica as the basic type font. It is preferred that you use this type font when composing substitute forms.

3.3.4
Print Spacing

Substitute forms should be printed using a 6 lines/inch vertical print option. They should also be printed horizontally in 10-pitch pica (that is, 10 print characters per inch) or 12-pitch elite (that is, 12 print positions per inch).

3.3.5
Image Size

The image size of a printed substitute form should be as close as possible to that of the official form. You may omit any text on both computer-prepared and computer-generated forms that is solely instructional.

3.3.6
Title Area Changes

To allow a large top margin for marginal printing and more lines per page, the title line(s) for all substitute forms (not including the form's year designation and sequence number, when present) may be photographically reduced by 40% or reset as one line of type. When reset as one line, the type size may be no smaller than 14 points. You may omit "Department of the Treasury—Internal Revenue Service" and all references to instructions in the form's title area.

3.3.7
Remove Government Publishing Office (GPO) Symbol and IRS Catalog Number

When privately printing substitute tax forms, the GPO symbol and/or jacket number must be removed. In the same place using the same type size, print the EIN of the printer or designer, or the IRS-assigned source code. (Preferably, this last number should be printed in the lower left area of the first page of each form.) Also, remove the IRS catalog number (Cat. No.) and the recycle symbol if the substitute is not produced on recycled paper.

3.3.8
Printing Single-Page Forms

Substitute single-page forms should be reproduced the same as IRS single-page forms. Other forms or schedules should not be printed on the back or on blank portions of a single-page form. However, printing instructions on the back or on blank portions of a single-page form is acceptable.

3.3.9
Photocopy Equipment

The IRS does not undertake to approve or disapprove the specific equipment or process used in reproducing official forms. Photocopies of forms must be entirely legible and satisfy the conditions stated in this and other revenue procedures.

3.3.10
Reproductions

Reproductions of official forms and substitute forms that do not meet the requirements of this revenue procedure may not be filed instead of the official forms. Illegible photocopies are subject to being returned to the filer for resubmission of legible copies.

3.3.11
Removal of Instructions

Generally, you may remove references to instructions. No prior approval is needed. However, in some instances, you may be requested to include references to instructions.

Exception. The words "For Paperwork Reduction Act Notice, see instructions" must be retained, or a similar statement indicating the location of the Notice must be provided on each form.

Section 3.4 – Margins

3.4.1
Margin Size

The format of a reproduced tax form when printed on the page must have margins on all sides at least as large as the margins on the official form. This allows room for IRS employees to make necessary entries on the form during processing.

- A 0.5-inch to 0.25-inch margin must be maintained across the top, bottom, and both sides of all substitute forms.
- The marginal, perforated strips containing pin-fed holes must be removed from all forms prior to filing with the IRS.

3.4.2
Marginal Printing

Prior approval is not required for the marginal printing allowed when printed on an official form or on a photocopy of an official form.

- With the exception of the actual tax return forms (for example, Forms 1040, 1040-SR, 1120, 940, 941, etc.), you may print in the left vertical margin and in the left half of the bottom margin.
- Printing is never allowed in the top right margin of the tax return form (for example, Forms 1040, 1040-SR, 1120, 940, 941, etc.). The IRS uses this area to imprint a Document Locator Number for each return. There are no exceptions to this requirement.

Section 3.5 – Miscellaneous Information for Substitute Forms

3.5.1
Filing Substitute Forms

To be acceptable for filing, a substitute form must print out in a format that will allow the filer to follow the same instructions that accompany official forms.The form must be legible, must be on the appropriately sized paper, and must include a jurat (perjury statement) where one appears on the published form.

3.5.2
Caution to Software Publishers

The IRS has received returns produced by software packages with approved output where either the form heading was altered or the lines were spaced irregularly. This produces an illegible or unrecognizable return or a return with the wrong number of pages. While many of these problems are caused by individual printer differences, they may delay input of return data and, in some cases, generate correspondence to the taxpayer. Therefore, in the instructions to the purchasers of your product, both individual and professional, stress that their returns will be processed more efficiently if they are properly formatted. This includes:

- Having the correct form numbers, six-digit form identifying numbers, and titles at the top of the returns; and
- Submitting the same number of pages as if the form were an official IRS form with the line items on the proper pages.

3.5.3
Caution to Producers of Software Packages

If you are producing a software package that generates name and address data onto the tax return, do not, under any circumstances, program either the IRS preprinted check digits or a practitioner-derived name control to appear on any return prepared and filed with the IRS.

3.5.4
Programming to Print Forms

Whenever applicable:

- Use only the following label information format for single filers: JOHN Q. DOE 000 OAK DRIVE HOMETOWN, STATE 00000;
- Use only the following label information format for joint filers: JOHN Q. DOE MARY Q. DOE 000 OAK DRIVE HOMETOWN, STATE 00000; and
- Use “0” for number values and “X” for alpha characters entered in data entry fields as dummy copy.

Part 4
Additional Resources

Section 4.1 – Guidance From Other Revenue Procedures

4.1.1
General

The IRS publications listed below provide guidance for substitute tax forms not covered in this revenue procedure. These publications are available on the IRS website. Use the publication number listed below to search for the requested document.

- Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
- Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
- Pub. 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.
- Pub. 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.
- Pub. 5223, General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C.

Section 4.2 – Electronic Tax Products

4.2.1
The IRS Website

Copies of tax forms and their instructions, publications, fillable forms, and prior year forms and publications may be found on the IRS website at https://www.irs.gov/forms.

Draft forms and instructions may be found at https://www.irs.gov/draftforms.

Other tax-related information may be found at https://www.irs.gov/.

4.2.2
System Requirements and Ordering Forms and Instructions

For system requirements, contact the National Technical Information Service (NTIS) at https://www.ntis.gov. Prices are subject to change.

You can order IRS forms and other tax material at https://www.irs.gov/orderforms.

Part 5
Requirements for Specific Tax Returns

Section 5.1 – Tax Returns (Forms 1040, 1040-SR, 1120, etc.)

5.1.1
Acceptable Forms

Tax return forms (such as Forms 1040, 1040-SR, and 1120) require a signature and establish tax liability. Computer-generated versions are acceptable under the following conditions.

- These substitute forms must be printed on plain white paper.
- Substitute forms must conform to the physical layout of the corresponding IRS form although the typeface may differ. The text should match the text on the officially published form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis. **Caution.** All jurats (perjury statements) must be reproduced verbatim. No text can be added, deleted, or changed in meaning.
- Various computer graphic print media such as laser printing, inkjet printing, etc., may be used to produce the substitute forms.
- The substitute form must be the same number of pages and contain the same text on the lines as the official form.
- All substitute forms must be submitted for approval prior to their original use. You do not need approval for a substitute form if its only change is the preprinted year and you had received a prior year approval letter. **Exception.** If the approval letter specifies a one-time exception for your form, the next year's form must be approved.

5.1.2
Prohibited Forms

The following are prohibited.

- Computer-generated tax forms (for example, Form 1040, 1040-SR, etc.) on lined or color-barred paper.
- Tax forms that differ from the official IRS forms in a manner that makes them nonstandard or unable to process.

5.1.3
Changes Permitted to Form 1040

Certain changes (listed in *Section 5.2*) are permitted to the graphics of the form without prior approval, but these changes apply to only acceptable preprinted forms. Changes not requiring prior approval are good only for the annual filing period, which is the current tax year. Such changes are valid in subsequent years only if the official form does not change.

5.1.4
Other Changes Not Listed

All changes not listed in *Section 5.2* require approval from the IRS before the form can be filed.

Section 5.2 – Changes Permitted to Graphics (Form 1040 or 1040-SR)

5.2.1
Adjustments

You may make minor vertical and horizontal spacing adjustments to allow for computer or word-processing printing. This includes widening the amount columns or tax entry areas if the adjustments comply with other provisions stated in revenue procedures. No prior approval is needed for these changes.

Schedules 1–3 cannot be combined for filing purposes. For the client copy of the return, the numbered schedules may be printed two to a page (for example, Schedule 3 below Schedule 2, if both are completed as part of the return). If numbered schedules are combined on the client copy, it must include a statement that it is "Not for Filing."

5.2.2
Name and Address Area

The horizontal rules and instructions within the name and address area may be removed and the entire area left blank. No line or instruction can remain in the area. The heavy-ruled border (when present) that outlines the name, address area, and SSN must not be removed, relocated, expanded, or contracted.

5.2.3
Required Format

When the name and address area is left blank, the following format must be used when printing the taxpayer's name and address.

- 1st name line (35 characters maximum).
- 2nd name line (35 characters maximum).
- In-care-of name line (35 characters maximum).
- City, state (25 characters maximum), one blank character, and ZIP code.

5.2.4
Conventional Name and Address Data

When there is no in-care-of name line, the name and address will consist of only three lines (single filer) or four lines (joint filer).

Example of joint filer. Name and address (joint filer) with no in-care-of name line:

JOHN Q. DOE
MARY Q. DOE
000 ANYWHERE ST., APT. 000
ANYTOWN, STATE 00000

Example of in-care-of name line. Name and address (single filer) with in-care-of name line:

JOHN Q. DOE
C/O JOHN R. DOE
0000 SOMEWHERE AVE.
SAMETOWN, STATE 00000

5.2.5
SSN and EIN Area

The broken vertical lines separating the format arrangement of the SSN/EIN may be removed. When the vertical lines are removed, the SSN and EIN formats must be 000-00-0000 or 00-0000000, respectively.

5.2.6
Entering Cents

- You may remove the vertical rule that separates the dollars from the cents if it is still included on the official IRS form.
- All entries in the amount column should have a decimal point following the whole dollar amounts whether or not the vertical line that separates the dollars from the cents is present.
- You may omit printing the cents, but all amounts entered on the form must follow a consistent format. You are strongly urged to round off the figures to whole dollar amounts, following the official form instructions.
- When several amounts are added together, the total should be rounded off after addition (that is, individual amounts should not be rounded off for computation purposes).
- When printing money amounts, you must use one of the following formats: (a) 0,000,000; or (b) 0,000,000.00.
- When there is no entry for a line, leave the line blank.

5.2.7
Changes to Lines

No prior approval is needed for the following changes (for use with computer-prepared forms only). Specific line numbers in the following headings may have changed due to tax law changes.

5.2.8
Dependents on Form 1040

The vertical lines separating columns (1) through (4) may be removed. The captions may be shortened to allow a one-line caption for each column.

5.2.9
Other Lines

Any other line with text that takes up two or more vertical lines may be compressed to one line by using contractions, etc., and by removing instructional references.

5.2.10
Form 1040 – Tax

You may change the line caption to read “Tax” and computer print the words “Total includes tax from” and either “Form(s) 8814” or “Form 4972” or “962 election.” If both forms are used, print both form numbers. This specific line number may have changed.

5.2.11
Color Screening

It is not necessary to duplicate the color screening used on the official form. A substitute Form 1040 or 1040-SR may be printed in black and white only with no color screening.

5.2.12
Other Changes Prohibited

No other changes to the Form 1040 or 1040-SR graphics are permitted without prior approval except for the removal of instructions and references to instructions.

Part 6
Format and Content of Substitute Returns

Section 6.1 – Acceptable Formats for Substitute Forms and Schedules

6.1.1
Exhibits and Use of Acceptable Formats

Exhibit A is an acceptable format for Form 1040-ES.

- If your computer-generated Form 1040-ES appears exactly like *Exhibit A*, no prior authorization is needed.
- You may computer-generate forms not shown here, but you must design them by following the manner and style discussed in *Part 3*.
- Take care to observe the other requirements and conditions in this revenue procedure. The IRS encourages the submission of all proposed forms covered by this revenue procedure.

6.1.2
Instructions

The format of each substitute form or schedule must follow the format of the official form or schedule as to item captions, line references, line numbers, sequence, form arrangement and format, etc. Basically, try to make the form look like the official one, with readability and consistency being primary factors. You may use periods and/or other similar special characters to separate the various parts and sections of the form. Do not use alpha or numeric characters for these purposes. All line numbers and items must be printed even though an amount is not entered on the line.

6.1.3
Line Numbers

When a line on an official form is designated by a number or a letter, that designation (reference code) must be used on a substitute form. The reference code must be printed to the left of the text of each line and immediately preceding the data entry field, even if no reference code precedes the data entry field on the official form. If an entry field contains multiple lines and shows the line references once on the left and right sides of the form, use the same number of line references on the substitute form.

In addition, the reference code that is immediately before the data field must either be followed by a period or enclosed in parentheses. There must also be at least two blank spaces between the period or the right parenthesis and the first digit of the data field. (See *Section 6.1.4*.)

6.1.4
Decimal Points

A decimal point (a period) should be used for each money amount regardless of whether the amount is reported in dollars and cents or in whole dollars, or whether or not the vertical line that separates the dollars from the cents is present. The decimal points must be vertically aligned when possible.

Example.

5 State and local taxes		
a State and local income taxes.....................	5a.	000.00
b State and local real estate taxes................	5b.	
c State and local personal property taxes....	5c.	000.00

or

a State and local income taxes.....................	(5a)	000.00
b State and local real estate taxes...............	(5b)	
c State and local personal property taxes....	(5c)	000.00

6.1.5
Multi-Page Forms

When submitting a multi-page form, send all its pages in the same package. If you will not be producing certain pages, note that in your cover letter.

Section 6.2 – Additional Instructions for All Forms

6.2.1
Use of Your Own Internal Control Numbers and Identifying Symbols

You may show the computer-prepared internal control numbers and identifying symbols on the substitute form if using such numbers or symbols is acceptable to the taxpayer and the taxpayer's representative. Such information must not be printed in the top 0.5-inch clear area of any form or schedule requiring a signature. Except for the actual tax return form (Forms 1040, 1040-SR, 1120, 940, 941, etc.), you may print in the left vertical and bottom left margins. The bottom left margin you may use extends 3.5 inches from the left edge of the form. You may print internal control numbers in place of the removed IRS catalog number.

6.2.2
Required Software ID Number (Source Code) on Computer-Prepared Substitutes

In the February 2009 Government Accountability Office (GAO) report, "Many Taxpayers Rely on Tax Software and IRS Needs to Assess Associated Risks" (GAO-09-297), the GAO recommended that the IRS require a software identification number on all individual returns to specifically identify the software package used to prepare each tax return. The IRS already has this capability for all *e-filed* returns. In addition, many tax preparation software firms already print an IRS-issued 3-letter source code on paper returns that are generated by their individual tax software. This source code was assigned when the firms were seeking substitute forms approval under this current publication.

In order to follow this GAO recommendation, the IRS will require that all tax preparation software firms include the 3-letter source code on all paper tax returns created by their individual tax preparation software. The many firms that currently have and display their source codes on paper returns generated from their software should continue to do so, and no change is necessary.

We have reviewed all software companies that passed Assurance Testing System (ATS) testing last filing season and have determined that some firms do not currently have source codes. To save you the burden of contacting us and for your convenience, we have assigned source codes to those firms.

You should program your source code to be placed in the bottom left-hand corner of page one of each paper form that will be generated by your individual tax return package. You do not need to apply for a new source code annually.

If you already use a 3-letter source code and we have issued you one in error, you are unsure if you were ever issued one, or you have other questions or concerns, you may contact Tax Forms and Publications Special Services Section at substituteforms@irs.gov.

The IRS requires tax preparation software firms that participate in the IRS Free File Program include the 3-letter FFF code on all paper Form 1040 returns created by their individual tax preparation software.

If you participate in the IRS Free File Program, you should program the 3-letter FFF code to be placed in the bottom left-hand corner of the first page of each paper Form 1040 that will be generated by your individual tax return package. The 3-letter FFF code and the 3-letter source code should be placed next to each other for consistency. If placing the 3-letter FFF code and the 3-letter source code next to each other is not possible, then above or below will be acceptable.

Example. The 3-letter FFF code and the 3-letter source code could be BCA-FFF or BCA FFF. A dash or a space is needed to separate the 3-letter FFF code and the 3-letter source code.

6.2.3
Descriptions for Captions, Lines, etc.

Descriptions for captions, lines, etc., appearing on the substitute forms may be limited to one print line by using abbreviations and contractions, and by omitting articles, prepositions, etc. However, sufficient keywords must be retained to permit ready identification of the caption, line, or item.

6.2.4
Determining Final Totals

Explanatory detail and/or intermediate calculations for determining final line totals may be included on the substitute form. Preferably, such calculations should be submitted in the form of a supporting statement. If intermediate calculations are included on the substitute form, the line on which they appear may not be numbered or lettered. Intermediate calculations may not be printed in the right column. This column is reserved only for official numbered and lettered lines that correspond to the ones on the official form. Generally, you may choose the format for intermediate calculations or subtotals on supporting statements to be submitted.

6.2.5
Instructional Text on the Official Form

Text on the official form, which is solely instructional (for example, “See instructions,” etc.), may generally be omitted from the substitute form.

6.2.6
Intermingling Is Prohibited

Showing more than one form or schedule on the same printout page is prohibited. Both sides of the paper may be used for multi-page forms, but it is unacceptable to intermingle forms.

For instance, Schedule E can be printed on both sides of the paper because the official form is multi-page, with page 2 continued on the back. However, do not print Schedule E on the front page and Schedule SE on the back page, or Schedule A on the front and Form 8615 on the back, etc. Both pages of a substitute form must match the official form. The back page may be left blank if the back page of the official form contains only the instructions.

6.2.7
Identifying Substitutes

Identify all computer-prepared substitutes clearly. Print the form designation 0.5 inch from the top margin and 1.5 inches from the left margin. Print the title centered on the first line of print. Print the tax year and, where applicable, the sequence number on the same line 0.5 inch to 1 inch from the right margin. Include the taxpayer’s name and SSN on all forms and attachments. Also, print the OMB number as reflected on the official form.

6.2.8
Negative Amounts

Negative (or loss) amount entries should be enclosed in brackets or parentheses or include a minus sign. This assists in accurate computation and input of form data. The IRS preprints parentheses in negative data fields on many official forms. These parentheses should be retained or inserted on printouts of affected substitute forms.

Part 7
Miscellaneous Forms and Programs

Section 7.1 – Specifications for Substitute Schedules K-1

7.1.1
Requirements for Schedules K-1 That Accompany Forms 1041, 1065, and 1120-S

Because of significant changes to improve processing, prior approval is now required for substitute Schedules K-1 that accompany Form 1041 (for estates and trusts), Form 1065 (for partnerships), or Form 1120-S (for S corporations). Substitute Schedules K-1 should be as close as possible to exact replicas of the official IRS schedules and follow the same process for submitting other substitute forms and schedules. Before releasing their substitute forms, software vendors are responsible for making any subsequent changes that have been made to the final official IRS forms after the draft forms have been posted.

Submit substitute Schedule K-1 forms, in PDF format, to scrips@irs.gov for scannability acceptance. Schedule K-1 forms that require testing do not need to be mailed to the Program. You must include information on the substitute forms that can be tested. This information should be dummy information. Use an “X” for alpha characters and “0” for numbers. The IRS will review and provide feedback of any changes needed so that your forms can be recognized correctly.

Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Allow at least 0.25 inch of white space around the 6-digit code.

- 661117 for Form 1041.
- 651123 for Form 1065.
- 671124 for Form 1120-S.

Schedules K-1 that accompany Forms 1041, 1065, or 1120-S must meet all specifications. The specifications include, but are not limited to, the following requirements.

- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words “* See attached statement for additional information.” must be preprinted in the lower right-hand side on Schedules K-1 of Forms 1041, 1065, and 1120-S.
- All Schedules K-1 that are filed with the IRS should be printed on commercial standard size (8.5″ x 11″) paper (the international standard (A4) of 8.27″ x 11.69″ may be substituted).
- 10-point Helvetica Light Standard is preferred for all entries that are typed or made using a computer.
- Submissions should include the IRS source code or NACTP vendor ID code printed on the lower left corner of the form or in place of the IRS catalog number.

- Each recipient's information must be on a separate sheet of paper. Therefore, you must separate all continuously printed substitutes, by recipient, before filing with the IRS.
- No carbon copies or pressure-sensitive copies will be accepted.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity (estate, trust, partnership, or S corporation) and the recipient (beneficiary, partner, or shareholder).
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, or 1120-S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- The Schedule K-1 must contain all the line items as shown on the official form, except for the instructions, if any are printed on the back of the official Schedule K-1.
- The line items or boxes must be in the same order and arrangement as those on the official form.
- The amount of each recipient's share of each item must be shown. A partial percent should be reflected as a decimal (for example, $50^1/_2$% should be 50.5%). Furnishing a total amount of each item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.
- State or local tax-related information may not be included on the Schedules K-1 filed with the IRS.

The entity may have to pay a penalty if substitute Schedules K-1 are filed that do not conform to specifications.

Additionally, the IRS may consider the Schedules K-1 that do not conform to specifications as not being able to be processed and may return Form 1041, 1065, or 1120-S to the filer to be filed correctly.

Schedules K-1 that are 2-D bar-coded will continue to require prior approval from the IRS. (See *Sections 7.1.3* through *7.1.5.*)

7.1.2
Special Requirements for Recipient Copies of Schedules K-1

Standardization for reporting information is required for recipient copies of substitute Schedules K-1 of Forms 1041, 1065, and 1120-S. Uniform visual standards are provided to increase compliance by allowing recipients and practitioners to more easily recognize a substitute Schedule K-1. The entity must furnish to each recipient a copy of Schedule K-1 that meets the following requirements.

- Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Allow white space around the 6-digit code.
  - 661117 for Form 1041.
  - 651123 for Form 1065.
  - 671124 for Form 1120-S.
- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words "* See attached statement for additional information." must be preprinted in the lower right-hand side on Schedules K-1 of Forms 1041, 1065, and 1120-S.

- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity and recipient.
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, or 1120-S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- All applicable amounts and information required to be reported must be titled and numbered in the same manner as shown on the official IRS schedule. The line items or boxes must be in the same order and arrangement and must be numbered like those on the official IRS schedule.
- The Schedule K-1 must contain all items required for use by the recipient. The instructions for the schedule must identify the line or box number and code, if any, for each item as shown on the official IRS schedule.
- The amount of each recipient's share of each item must be shown. A partial percent should be reflected as a decimal (for example, 50 1/2% should be 50.5%). Furnishing a total amount of each line item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.
- Instructions to the recipient that are substantially similar to those on or accompanying the official IRS schedule must be provided to aid in the proper reporting of the items on the recipient's income tax return. Where items are not reported to a recipient because they do not apply, the related instructions may be omitted.
- The quality of the ink or other material used to generate recipients' schedules must produce clearly legible documents. In general, black chemical transfer inks are preferred.
- In order to assure uniformity of substitute Schedules K-1, the paper size should be standard commercial (8.5″ x 11″) (the international standard (A4) of 8.27″ x 11.69″ may be substituted).
- The paper weight, paper color, font type, font size, font color, and page layout must be such that the average recipient can easily decipher the information on each page. The preferred font is Helvetica and a minimum of 10-point font.
- State or local tax-related information may be included on recipient copies of substitute Schedules K-1. All non-tax-related information should be separated from the tax information on the substitute schedule to avoid confusion for the recipient.
- The legend "Important Tax Return Document Enclosed" must appear in a bold and conspicuous manner on the outside of the envelope that contains the substitute recipient copy of Schedule K-1.
- The entity may have to pay a penalty if a substitute Schedule K-1 furnished to any recipient does not conform to the specifications of this revenue procedure and results in impeding processing.

7.1.3 Requirements for Schedules K-1 With Two-Dimensional (2-D) Bar Codes

Electronic filing is the preferred method of filing; however, 2-D bar code is the best alternative method for paper processing.

In an effort to improve efficiency and increase data accuracy, the IRS partnered with the tax software development community on a 2-D bar code project in 2003. Certain tax software packages have been modified to generate 2-D bar codes on Schedules K-1. As a result, when Schedules K-1 are printed using these programs, a bar code will print on the page.

Rather than manually transcribe information from the Schedule K-1, the IRS will scan the bar code and electronically upload the information from the Schedule K-1. This will result in more efficient operations within the IRS and fewer transcription errors for your clients.

Note. If software vendors do not want to produce bar-coded Schedules K-1, they may produce the official IRS Schedules K-1 but cannot use the expedited process for approving bar-coded Schedules K-1 and their parent returns as outlined in *Section 7.1.6*.

In addition to the requirements in *Sections 7.1.1* and *7.1.2*, the bar-coded Schedules K-1 must meet the following specifications.

- The bar code should print in the space labeled "For IRS Use Only" on each Schedule K-1. The entire bar code must print within the "For IRS Use Only" box surrounded by a white space of at least 0.25 inch.
- Bar codes must print in PDF417 format.
- The bar codes must always be in the specified format with every field represented by at least a field delimiter (carriage return). Leaving out a field in a bar code will cause every subsequent field to be misread.
- Be sure to include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Allow white space around the 6-digit code.
  - 661117 for Form 1041.
  - 651123 for Form 1065.
  - 671124 for Form 1120-S.

7.1.4 2-D Bar Code Specifications for Schedules K-1

Follow these general specifications for preparing all 2-D bar-coded Schedules K-1.

- Numeric fields.
  - Do not include leading zeros (except TINs, ZIP codes, and percentages).
  - If negative value, the minus sign "–" must be present immediately to the left of the number and part of the 12-position field.
  - Do not use non-numeric characters except that the literal "STMT" can be put in money fields.
  - All money fields should be rounded to the nearest whole dollar amount—if a money amount ends in 00 to 49 cents, drop the cents; if it ends in 50 to 99 cents, truncate the cents and increment the dollar amount by one. Use the same rounding technique for the bar-coded and the printed Schedules K-1.
  - All numeric-only fields are right justified (except TINs and ZIP codes).
- All field lengths are expressed as maximum lengths. If the value in the field has fewer positions or the software program does not support that many positions, put in the bar code only those positions actually used.
- Alpha fields.
  - Do not include leading blanks (left justified).

- Do not include trailing blanks.
- Use uppercase alpha characters only.

- Variable fields.
  - Do not include leading blanks (left justified).
  - Do not include trailing blanks.
  - Use uppercase alpha characters, numerics, and special characters as defined in each field.
- Delimit each field with a carriage return.
- Express percentages as 6-digit numbers without the percent sign. Left justify with a leading zero(s) (for percentages less than 100%) and no decimal point (decimal point is assumed between 3rd and 4th positions). Examples: 25.32% expressed as "025320"; 105% expressed as "105000"; 8.275% expressed as "008275"; 10.24674% expressed as "010247."
- It is vital that the print routine reinitialize the bar code prior to printing each succeeding Schedule K-1. Failure to do this will result in each Schedule K-1 for a parent return having the same bar code as the document before it.

7.1.5
Approval Process for Bar-Coded Schedules K-1

Prior to releasing commercially available tax software that creates bar-coded Schedules K-1, the printed schedule and the bar code must both be tested. If your company is creating bar-coded Schedules K-1, you must receive certification for both the printed Schedule K-1, as well as the bar code, before offering your product for sale. Bar-code testing must be done using the final official IRS Schedule K-1. Bar-code approval requests must be resubmitted for any subsequent changes to the official IRS form that would affect the bar code. Below are instructions and a sequence of events that will comprise the testing process.

- The IRS has released the final Schedule K-1 bar-code specifications by publishing them on the IRS website (see https://www.irs.gov/e-file-providers/k-1-bar-code-certification-process).
- The IRS will publish a set of test documents that will be used to test the ability of tax preparation software to create bar codes in the correct format.
- Software developers will submit two identical copies of the test documents—one to the IRS and one to a contracted testing vendor.
- The IRS will use one set to ensure the printed schedules comply with standard substitute forms specifications.
- If the printed forms fail to meet the substitute forms criteria, the IRS will inform the software developer of the reason for noncompliance.
- The software developer must resubmit the Schedule(s) K-1 until it passes the substitute forms criteria.
- The testing vendor will review the bar codes to ensure they meet the published bar-code specifications.
- If the bar code(s) does not meet published specifications, the testing vendor will contact the software developer directly, informing them of the reason for noncompliance.
- Software developers must submit new bar-coded schedules until they pass the bar-code test.

- When the bar code passes, the testing vendor will inform the IRS that the developer has passed the bar-code test and the IRS will issue an overall approval for both the substitute form and the bar code.
- After receiving this consolidated response, the software vendor is free to release software for tax preparation as long as any subsequent revisions to the schedules do not change the fields.
- Find the mailing address for the testing vendor next in *Section 7.1.6*. Separate and simultaneous mailings to the IRS and the vendor will reduce testing time.

7.1.6
Procedures for Reducing Testing Time

In order to help provide incentives to the software development community to participate in the Schedule K-1 2-D project, the IRS has committed to expediting the testing of bar-coded Schedules K-1 and their associated parent returns. To receive this expedited service, follow the instructions below.

- Mail the parent returns (Forms 1041, 1065, 1120-S) and associated bar-coded Schedule(s) K-1 to the appropriate address below in a separate package from all other approval requests.

  Internal Revenue Service
  Attn: K-1 Substitute Forms Analyst
  SE:W:CAR:MP:T:T:SP
  Room 6411
  1111 Constitution Ave. NW
  Washington, DC 20224

- Mail one copy of the parent form(s) and Schedule(s) K-1 to the IRS and another copy to the testing vendor at the address below.

  Leidos-IRS Paper and Remittance
  Processing Support (PRPS II)
  Attn: Dane Hawkins
  9737 Washingtonian Blvd.
  Gaithersburg, MD 20878

- Include multiple email and phone contact points in the packages.
- While the IRS can expedite bar-coded Schedules K-1 and their associated parent returns, it cannot expedite the approval of nonassociated tax returns.
- Vendors are encouraged to go to https://www.nactp.org for compliance guidelines in regards to file size and error-correction level.
- Submissions should include the IRS source code or NACTP vendor ID code printed on the lower left corner of the form or in place of the IRS catalog number.
- If a change is made to the bar code after approval, be sure to increment the version number.

Section 7.2 – Guidelines for Substitute Forms 8655

7.2.1
Increased Standardization for Forms 8655

Increased standardization for reporting information on substitute Forms 8655 is now required to aid in processing and for compliance purposes. Follow the guidelines in *Section 7.2.2*.

7.2.2
Requirements for Substitute Forms 8655

Follow these specific requirements when producing substitute Forms 8655.

- The first line of the title must be "Reporting Agent Authorization."
- If you want to include a reference to "State Limited Power of Attorney," it can be in parentheses under the title. "State" must be the first word within the parentheses.
- You must include "Form 8655" on the form.
- While the line numbers do not have to match the official form, the sequence of the information must be in the same order.
- The size of any variable data must be printed in a font no smaller than 10 points.
- For adequate disclosure checks, the following must be included for each taxpayer.
  - Name.
  - EIN.
  - Address.
- At this time, Form 944 will not be required if Form 941 is checked. Only those forms that the reporting agent company supports need to be listed.
- The jurat (perjury statement) must be identical with the exception of references to line numbers.
- A contact name and number for the reporting agent are not required.
- Any state information included should be contained in a separate section of the substitute form. Preferably, this information will be in the same area as line 19 of the official form.
- All substitute Forms 8655 must be approved by the Program as outlined in the Form 8655 specifications in this current publication.
- If you have not already been assigned a 3-letter source code, you will be given one when your substitute form is submitted for approval. This source code should be included in the lower left corner of the form.
- The 20-business-day assumed approval policy does not apply to Form 8655 approvals.

7.2.3
Exception for Form 8655

Because of how Form 8655 is processed and distributed to recipients, vendors are allowed to affix their logos onto the substitute version of the form. **This exception is for Form 8655 only.**

Section 7.3 – Guidelines for Substitute Image Character Recognition (ICR) Forms

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7.3.1
Overview

The following suggestions may be used as a guideline for creating easily scanned substitute tax forms. If you choose to participate, use the Form 1040 format provided in *Exhibit C* and *Exhibit D*. The grid view is for user ease of understanding only and should be removed before printing forms for submission.

Note. The exhibits are to show formatting only, and are not a current copy of the form. Use the most current version of any form to create the substitute tax form.

7.3.2
Automated Processing of Certain Forms

Certain forms have been redesigned for automated processing via ICR technology. As a result, these forms have different requirements for reproduction. These specific requirements apply to both the form image as well as the format of the variable data.

7.3.3
Form Design Requirements

- Forms should have a 0.5-inch margin on all sides.
- Nothing should be printed within the 0.5-inch margins.
- Vertical and horizontal lines should be replicated as they are on the IRS form.
- Printing should be in black ink on white paper. No color or shading should be used.
- Reproduce the exact text on each line as it appears on the IRS form. Do not abbreviate or leave out text.

7.3.4
Data Format Requirements

- See *Section 3.3*.
- Rows 1–3 and 64–66, and columns 1–5 and 81–85 should be left blank.
- SSN and EIN fields should have dashes (for example, 999-99-9999 or 99-9999999).
- Do not use real data unless specifically directed (for example, printing 12345678912 vs. XXXXXXXXXXX for bank routing number as required by Pub. 1345).
- Dollar value fields should be printed with commas and no decimals (for example, 999,999,999).
- Data placement should match defined areas on the form. Variable data should not be printed outside defined areas (for example, first, middle, last, and suffix fields should be printed where they appear on the IRS form, not combined).
- Do not populate blank value fields with a zero. If there is no value for a field, leave it blank. Exceptions include calculated fields with valid inputs that result in a value of zero.
- Vendor codes and company-specific printing information should only appear in the spaces designated on the form.

Part 8
Additional Information

Section 8.1 – Forms for Electronically Filed Returns

8.1.1
Electronic Filing Program

Electronic filing is a method by which authorized providers transmit tax return information to an IRS Service Center in the format of the official IRS forms. The IRS accepts both refund and balance due forms that are filed electronically.

8.1.2
Applying To Participate in IRS e-file

Anyone wishing to participate in IRS *e-file* of tax returns must submit an *e-file* application. The application can be completed and submitted electronically on the IRS website at https://www.irs.gov after first registering for e-services on the website. For specific information about completing an *e-file* application to participate in IRS *e-file* of tax returns, refer to Pub. 3112, IRS *e-file* Application & Participation.

8.1.3
Obtaining the Taxpayer Signature/Submission of Required Paper Documents

Taxpayers choosing to electronically prepare and file their returns will be required to use the Self-Select PIN method as their signatures.

Electronic return originators (EROs) can *e-file* individual income tax returns only if the returns are signed electronically using either the Self-Select or Practitioner PIN method.

Taxpayers must use Form 8453, U.S. Individual Income Tax Transmittal for an IRS *e-file* Return, to send supporting documents that are required to be submitted to the IRS.

For specific information about electronic filing, refer to Pub. 1345, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns.

8.1.4
Guidelines for Preparing Substitute Forms in the Electronic Filing Program

A participant in the electronic filing program who wants to develop a substitute form should follow the guidelines throughout this publication and send a sample form for approval to the Program at substituteforms@irs.gov. If you do not prepare substitute Form 8453 using a font in which all IRS wording fits on a single page, the form will not be accepted.

Note. Use of unapproved forms could result in suspension of the participant from the electronic filing program.

Section 8.2 – Effect on Other Documents

8.2.1
Effect on Other Documents

This revenue procedure supersedes Revenue Procedure 2023-28, 2023-43 I.R.B. 1092.

Section 8.3 – Exhibits

Exhibit A — Form 1040-ES Voucher 20XX

Exhibit B — Substitute Form Checksheet

Exhibit C — Form 1040 With Grid

Exhibit D — Form 1040 Without Grid

Software Developers Voucher

Exhibit A

Form 1040-ES Voucher

Form 1040-ES (OCR) Department of the Treasury Internal Revenue Service	20XX OMB No. 1545-0074	Estimated Tax	Payment Voucher 1	Calendar year— Due April XX, 20XX

Make your check or money order payable to "**United States Treasury.**"
Enter your SSN and "20XX Form 1040-ES" on your payment.
If your name, address, or SSN is incorrect, see instructions.

Amount of estimated tax you are paying by check or money order.	Dollars 0,000	Cents

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Pay online at IRS.gov/epay. Simple. Fast. Secure.

John Q. Doe
000 Someplace Somewhere Blvd.
City, St 00000

PO Box 00000
City, St 00000 - 0000

000000000 XX DOE 00 0 20XX12 000

Exhibit B

Substitute Forms Checksheet

Checksheet of IRS Substitute Forms
Submitted on:
Enter the following information:
Company:
Contact:
Phone:
Fax:
Source Code:

Form Number	Approved	Approved With Corrections	Comments

Authorized Name: ____________________
Title: ____________________
Reviewer's Name: ____________________
Telephone: ____________________
Date: ____________________

Form 1040 With Grid

Exhibit C

Form 1040 With Grid

Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return **20XX** OMB No. 1545-0074 IRS Use Only–Do not write or staple in this space.

Your first name and middle initial	Last name	Your social security number
XXXXXXXXXXXX X	XXXXXXXXXXXXXXXXXXXXX	999999999
If joint return, spouse's first name and middle initial	Last name	Spouse's social security number
XXXXXXXXXXXX X	XXXXXXXXXXXXXXXXXXXXX	999999999

Home address (number and street). If you have a P.O box, see instructions.	Apt. no.	Taxpayer Date of Death
		01/01/01
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	XXXXX	Spouse's Date of Death

City, town or post office. If you have a foreign address, also complete spaces below.	State	ZIP code	
			01/01/01
XXXXXXXXXXXXXXXXXXXXX	XX	9999999999	

Foreign country name	Foreign province/state/county	Foreign postal code
XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	9999999999999999

Filing Status
Check only one box.
X Single
X Married filing jointly
X Married filing separately (MFS)
X Head of household (HOH)
X Qualifying surviving spouse (QSS)

Standard Deduction - Someone can claim:
X You as a dependent X Your spouse as a dependent
X Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness	You	Spouse
Born before 1/2/1958:	X	X
Blind:	X	X

Presidential Election Campaign
Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund.
X You X Spouse

If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Digital Assets At any time during 20XX, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) X Yes X No

Dependents (see instructions):

If more than four dependents, see instructions and check here X

(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a Form W-2, see instructions.

Line	Description			Line	Amount
1a	Total amount from Form(s) W-2, box 1 (see instructions)			1a	999,999,999
b	Household employee wages not reported on Form(s) W-2			1b	999,999,999
c	Tip income not reported on line 1a (see instructions)			1c	999,999,999
d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)			1d	999,999,999
e	Taxable dependent care benefits from Form 2441, line 26			1e	999,999,999
f	Employer-provided adoption benefits from Form 8839, line 29			1f	999,999,999
g	Wages from Form 8919, line 6			1g	999,999,999
h	Other earned income (see instructions)			1h	999,999,999
i	Nontaxable combat pay election (see instructions)	1i	999,999,999		
z	Add lines 1a through 1h			1z	999,999,999

Attach Sch. B if required.

Line	Description	Line	Amount		Line	Amount
2a	Tax-exempt interest	2a	999,999,999	b Taxable interest	2b	999,999,999
3a	Qualified dividends	3a	999,999,999	b Ordinary dividends	3b	999,999,999
4a	IRA distributions	4a	999,999,999	b Taxable amount	4b	999,999,999
5a	Pensions and annuities	5a	999,999,999	b Taxable amount	5b	999,999,999
6a	Social sec. ben.	6a	999,999,999	b Taxable amount	6b	999,999,999

Standard Deduction for –
- Single or Married filing separately, $12,950
- Married filing jointly or Qualifying surviving spouse, $25,900
- Head of household, $19,400
- If you checked any box under Standard Deduction, see instructions.

Line	Description		Line	Amount
c	If you elect to use the lump-sum election method, check here (see instructions)	X		
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here	X	7	999,999,999
8	Other income from Schedule 1, line 10		8	999,999,999
9	Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income**		9	999,999,999
10	Adjustments to income from Schedule 1, line 26		10	999,999,999
11	Subtract line 10 from line 9. This is your **adjusted gross income**		11	999,999,999
12	**Standard deduction or itemized deductions** (from Schedule A)		12	999,999,999
13	Qualified business income deduction from Form 8995 or Form 8995-A		13	999,999,999
14	Add lines 12 and 13		14	999,999,999
15	Subtract line 14 from line 11. If zero or less, enter -0-. This is your **taxable income**		15	999,999,999

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form **1040** (20XX)

DAA

Form 1040 (20XX) Page 2

Name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX SSN 999999999

Tax and Credits

Line	Description		Amount	Line	Amount
16	Tax (see instructions). Check if any from Form(s): 1 X 8814 2 X 4972 3 X XXXXXXXXX 999,999,999			16	999,999,999
17	Amount from Schedule 2, line 3			17	999,999,999
18	Add lines 16 and 17			18	999,999,999
19	Child tax credit or credit for other dependents from Schedule 8812			19	999,999,999
20	Amount from Schedule 3, line 8			20	999,999,999
21	Add lines 19 and 20			21	999,999,999
22	Subtract line 21 from line 18. If zero or less, enter -0-			22	999,999,999
23	Other taxes, including self-employment tax, from Schedule 2, line 21			23	999,999,999
24	Add lines 22 and 23. This is your **total tax**			24	999,999,999

Payments

Line	Description		Amount	Line	Amount
25	Federal income tax withheld from:				
a	Form(s) W-2	25a	999,999,999		
b	Form(s) 1099	25b	999,999,999		
c	Other forms (see instructions)	25c	999,999,999		
d	Add lines 25a through 25c			25d	999,999,999
26	20XX estimated tax payments and amount applied from 20XX return			26	999,999,999
27	Earned income credit (EIC)	27	999,999,999		
28	Additional child tax credit from Schedule 8812	28	999,999,999		
29	American opportunity credit from Form 8863, line 8	29	999,999,999		
30	Reserved for future use	30			
31	Amount from Schedule 3, line 15	31	999,999,999		
32	Add lines 27, 28, 29, and 31. These are your **total other payments and refundable credits**			32	999,999,999
33	Add lines 25d, 26, and 32. These are your **total payments**			33	999,999,999

If you have a qualifying child, attach Sch. EIC.

Refund

Line	Description		Amount	Line	Amount
34	If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you **overpaid**			34	999,999,999
35a	Amount of line 34 you want **refunded to you.** If Form 8888 is attached, check here X			35a	999,999,999
b	Routing number 999999999 c Type: X Checking X Savings				
d	Account number 99999999999999999				
36	Amount of line 34 you want **applied to your 20XX estimated tax**	36	999,999,999		

Direct deposit? See instructions.

Amount You Owe

Line	Description		Amount	Line	Amount
37	Subtract line 33 from line 24. This is the **amount you owe.** For details on how to pay, go to *www.irs.gov/Payments* or see instructions			37	999,999,999
38	Estimated tax penalty (see instructions)	38	999,999,999		

Third Party Designee

Do you want to allow another person to discuss this return with the IRS? See instructions X **Yes.** Complete below. X **No**

Designee's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Phone no. 999-999-9999 Personal identification number (PIN) 99999

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature XXXXXXXXXXXXXXXXXXXXXXXXXXXX Date If the IRS sent you an Identity Protection PIN, enter it here (see instr.) 999999

Spouse's signature. If a joint return, both must sign. XXXXXXXXXXXXXXXXXXXXXXXXXXXX Date If the IRS sent your spouse an Identity Protection PIN, enter it here (see instr.) 999999

Your occupation XXXXXXXXXXXXXXXXXXXXXXXXXXXX Spouse's occupation XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Phone no. 999-999-9999 Email address XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Paid Preparer Use Only

Preparer's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Preparer's signature XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Date 01/01/10 PTIN 99999999999 Check if: X Self-employed

Firm's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Phone no. 999-999-9999

Firm's address XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXX XX XXXXXXXXXX Firm's EIN 9999999999

Go to *www.irs.gov/Form1040* for instructions and the latest information. Form **1040** (20XX)

DAA

Form 1040 Without Grid

Exhibit D

Form 1040 Without Grid

Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return **20XX** OMB No. 1545-0074 IRS Use Only–Do not write or staple in this space.

Your first name and middle initial	Last name	Your social security number
XXXXXXXXXXXX X	XXXXXXXXXXXXXXXXXXXX	999999999
If joint return, spouse's first name and middle initial	Last name	Spouse's social security number
XXXXXXXXXXXX X	XXXXXXXXXXXXXXXXXXXX	999999999

Home address (number and street). If you have a P.O box, see instructions.	Apt. no.	Taxpayer Date of Death
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	XXXXX	01/01/01
		Spouse's Date of Death
		01/01/01

City, town or post office. If you have a foreign address, also complete spaces below.	State	ZIP code
XXXXXXXXXXXXXXXXXXXX	XX	9999999999

Foreign country name	Foreign province/state/county	Foreign postal code
XXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	9999999999999999

Filing Status
Check only one box.
- X Single
- X Married filing jointly
- X Married filing separately (MFS)
- X Head of household (HOH)
- X Qualifying surviving spouse (QSS)

Standard Deduction - Someone can claim:
X You as a dependent X Your spouse as a dependent
X Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness	You	Spouse
Born before 1/2/1958:	X	X
Blind:	X	X

Presidential Election Campaign
Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund.
X You X Spouse

If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Digital Assets At any time during 20XX, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) X Yes X No

Dependents (see instructions):
If more than four dependents, see instructions and check here X

(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) Child tax credit	(4) Credit for other dependents
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X
XXXXXXXXXXXX	XXXXXXXXXXXXX	999999999	XXXXXXXXXXXX	X	X

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a Form W-2, see instructions.

Line	Description		Amount	Line	Amount
1a	Total amount from Form(s) W-2, box 1 (see instructions)			1a	999,999,999
b	Household employee wages not reported on Form(s) W-2			1b	999,999,999
c	Tip income not reported on line 1a (see instructions)			1c	999,999,999
d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)			1d	999,999,999
e	Taxable dependent care benefits from Form 2441, line 26			1e	999,999,999
f	Employer-provided adoption benefits from Form 8839, line 29			1f	999,999,999
g	Wages from Form 8919, line 6			1g	999,999,999
h	Other earned income (see instructions)			1h	999,999,999
i	Nontaxable combat pay election (see instructions)	1i	999,999,999		
z	Add lines 1a through 1h			1z	999,999,999
2a	Tax-exempt interest	2a	999,999,999	2b b Taxable interest	999,999,999
3a	Qualified dividends	3a	999,999,999	3b b Ordinary dividends	999,999,999
4a	IRA distributions	4a	999,999,999	4b b Taxable amount	999,999,999
5a	Pensions and annuities	5a	999,999,999	5b b Taxable amount	999,999,999
6a	Social sec. ben.	6a	999,999,999	6b b Taxable amount	999,999,999
c	If you elect to use the lump-sum election method, check here (see instructions)	X			
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here	X		7	999,999,999
8	Other income from Schedule 1, line 10			8	999,999,999
9	Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income**			9	999,999,999
10	Adjustments to income from Schedule 1, line 26			10	999,999,999
11	Subtract line 10 from line 9. This is your **adjusted gross income**			11	999,999,999
12	**Standard deduction or itemized deductions** (from Schedule A)			12	999,999,999
13	Qualified business income deduction from Form 8995 or Form 8995-A			13	999,999,999
14	Add lines 12 and 13			14	999,999,999
15	Subtract line 14 from line 11. If zero or less, enter -0-. This is your **taxable income**			15	999,999,999

Attach Sch. B if required.

Standard Deduction for –
- Single or Married filing separately, $12,950
- Married filing jointly or Qualifying surviving spouse, $25,900
- Head of household, $19,400
- If you checked any box under Standard Deduction, see instructions.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form **1040** (20XX)

DAA

Form 1040 (20XX) Page 2

Name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX SSN 999999999

Tax and Credits

16	Tax (see instructions). Check if any from Form(s): 1 X 8814 2 X 4972 3 X XXXXXXXXX 999,999,999		16	999,999,999
17	Amount from Schedule 2, line 3		17	999,999,999
18	Add lines 16 and 17		18	999,999,999
19	Child tax credit or credit for other dependents from Schedule 8812		19	999,999,999
20	Amount from Schedule 3, line 8		20	999,999,999
21	Add lines 19 and 20		21	999,999,999
22	Subtract line 21 from line 18. If zero or less, enter -0-		22	999,999,999
23	Other taxes, including self-employment tax, from Schedule 2, line 21		23	999,999,999
24	Add lines 22 and 23. This is your **total tax**		24	999,999,999

Payments

25	Federal income tax withheld from:				
a	Form(s) W-2	25a	999,999,999		
b	Form(s) 1099	25b	999,999,999		
c	Other forms (see instructions)	25c	999,999,999		
d	Add lines 25a through 25c			25d	999,999,999
26	20XX estimated tax payments and amount applied from 20XX return			26	999,999,999
27	Earned income credit (EIC)	27	999,999,999		
28	Additional child tax credit from Schedule 8812	28	999,999,999		
29	American opportunity credit from Form 8863, line 8	29	999,999,999		
30	Reserved for future use	30			
31	Amount from Schedule 3, line 15	31	999,999,999		
32	Add lines 27, 28, 29, and 31. These are your **total other payments and refundable credits**			32	999,999,999
33	Add lines 25d, 26, and 32. These are your **total payments**			33	999,999,999

If you have a qualifying child, attach Sch. EIC.

Refund

34	If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you **overpaid**			34	999,999,999
35a	Amount of line 34 you want **refunded to you.** If Form 8888 is attached, check here X			35a	999,999,999
b	Routing number 999999999 c Type: X Checking X Savings				
d	Account number 99999999999999999				
36	Amount of line 34 you want **applied to your 20XX estimated tax**	36	999,999,999		

Direct deposit? See instructions.

Amount You Owe

37	Subtract line 33 from line 24. This is the **amount you owe.** For details on how to pay, go to *www.irs.gov/Payments* or see instructions			37	999,999,999
38	Estimated tax penalty (see instructions)	38	999,999,999		

Third Party Designee

Do you want to allow another person to discuss this return with the IRS? See instructions X **Yes.** Complete below. X **No**

Designee's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Phone no. 999-999-9999 Personal identification number (PIN) 99999

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature XXXXXXXXXXXXXXXXXXXXXXXXXXX | Date | If the IRS sent you an Identity Protection PIN, enter it here (see inst.) 999999

Spouse's signature. If a joint return, both must sign. XXXXXXXXXXXXXXXXXXXXXXXXXXX | Date | If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.) 999999

Your occupation XXXXXXXXXXXXXXXXXXXXXXXXXX | Spouse's occupation XXXXXXXXXXXXXXXXXXXXXXXXXX

Phone no. 999-999-9999 | Email address XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Paid Preparer Use Only

Preparer's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Preparer's signature XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX | Date 01/01/10 | PTIN 99999999999 | Check if: X Self-employed

Firm's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX | Phone no. 999-999-9999

Firm's address XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX XX XXXXXXXXXX | Firm's EIN 999999999

Go to *www.irs.gov/Form1040* for instructions and the latest information. Form **1040** (20XX)

DAA

Part IV

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

Announcement 2024-36

Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on October 10, 2024, and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Name Of Organization	Effective Date of Revocation	Location
Azalea Training Center Inc.	10/1/2020	Millbrook, AL
Carlton Woods Association Inc	1/1/2021	Houston, TX.
Adjusting to Change Lives	1/1/2021	Pearland, TX
Rizpah House	1/1/2020	Lakewood, CA

Notice of Proposed Rulemaking

Entities Wholly Owned by Indian Tribal Governments

REG-113628-21

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations regarding the Federal tax classification of entities wholly owned by Indian Tribal governments (Tribes). The proposed regulations would provide that entities that are wholly owned by Tribes and organized or incorporated exclusively under the laws of the Tribes that own them generally are not recognized as separate entities for Federal tax purposes. The proposed regulations would also provide that, for purposes of making certain elective payment elections (including determining eligibility for and the consequences of such elections) for certain energy credits under the Inflation Reduction Act of 2022, these entities and certain Tribal corporations chartered by the Department of the Interior (DOI) are treated as an instrumentality of one or more Indian Tribal governments or subdivisions thereof. This document also requests comments and provides notice of a public hearing on the proposed regulations that will be in addition to Tribal consultation on the proposed regulations.

DATES: *Comments*: Electronic or written comments on this proposed rule from the public must be received by January 7, 2025.

Public Hearing: The public hearing on these proposed regulations is scheduled to be held on January 17, 2025, at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by January 7, 2025. If no outlines are received by January 7, 2025, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-113628-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-113628-21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Amanda R. Markarian of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317-6850 (not a toll-free number); and concerning submissions of comments, the hearing, or any questions to attend the hearing by teleconferencing, contact Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or preferably by email to *publichearings@irs.gov*. If emailing, please include the following information in the subject line: Attend, Testify, or Question and REG-113628-21.

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed amendments to provisions of 26 CFR part 1 (Income Tax Regulations) under section 6417 of the Internal Revenue Code (Code) and 26 CFR part 301 (Procedure and Administration Regulations) under section 7701 of the Code that would address the Federal tax treatment of certain Tribal entities wholly owned by one or more Indian Tribal governments (proposed regulations).

Section 6417(h) provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary) relating to elective payment elections under section 6417 (section 6417 elections), stating, "[t]he Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c))."

Section 7701(a)(40) provides an express delegation of authority to the Secretary related to identifying Indian Tribal governments for Federal tax purposes, stating, "[t]he term 'Indian tribal government' means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions."[1]

Finally, section 7805(a) of the Code authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

I. *Overview*

The proposed regulations under section 7701 would provide that an entity wholly owned by one or more Indian Tribal governments, within the meaning of section 7701(a)(40), that is organized or incorporated under the laws of the Tribe or Tribes that own it (wholly owned Tribal entity) is not recognized as a separate entity for Federal tax purposes. A single member limited liability company organized under the laws of the Tribe that owns it would be a wholly owned Tribal entity. Addition-

[1] Under the Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, 108 Stat. 4791 (List Act), the Secretary of the Interior is required to publish annually a list of all Federally-recognized Tribes. In Revenue Procedure 2008-55 (2008-39 I.R.B. 768), after consultation with the Department of Interior (DOI), the Treasury Department and the IRS determined that the Indian tribal entities that appear on the current or future lists of Federally-recognized Tribes published annually under the List Act by the DOI, Bureau of Indian Affairs, are designated as Indian tribal governments for purposes of section 7701(a)(40). See 89 FR 944 (January 8, 2024) for the most current list published by the DOI, Bureau of Indian Affairs.

ally, the proposed regulations would provide that wholly owned Tribal entities, as well as Tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124 (section 17 corporations), or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203 (section 3 corporations), are treated, for purposes of making section 6417 elections (including determining eligibility for and the consequences of such elections), as instrumentalities of the Indian Tribal government(s) that wholly own them.

The Treasury Department and the IRS consulted with DOI on these proposed rules because of DOI's role in working with Federally-recognized Indian Tribes and administering a broad array of Federal laws that affect Federally-recognized Indian Tribes. These proposed rules would address only the application of Federal tax law and would not affect the rights of Tribes and Tribal entities under other Federal laws.

The Treasury Department and the IRS continue to consider the Federal tax treatment of Tribally chartered corporations that are owned in part by persons other than Tribes. The Treasury Department and the IRS would conduct Tribal consultation prior to issuing any additional guidance in that area.

II. *Executive Order 14112*

In December 2023, the President issued an executive order titled "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." Executive Order 14112 (Dec. 6, 2023). Executive Order 14112 reaffirms the Executive Branch's support for Tribal self-determination as the most effective policy for the economic growth of Tribal Nations and the economic well-being of Tribal citizens. Executive Order 14112 requires agency heads to take certain actions, consistent with applicable law and to the extent practicable, to increase access to "Federal funding and support programs for Tribal Nations"; provide Tribal Nations with the flexibility to improve economic growth and address the specific needs of their communities; and reduce administrative burdens. Section 2(b) of the Executive Order defines "Federal funding and support programs for Tribal Nations" as including "funding, programs, technical assistance, loans, grants, or other financial support or direct services that the Federal Government provides to Tribal Nations or Indians because of their status as Indians." The Treasury Tribal Advisory Committee has advised that Tribes consider "financial support" in Executive Order 14112 to include tax matters that range from tax credits to Federal tax rules that regulate Tribal revenue.

Consistent with Executive Order 14112, the Treasury Department and the IRS recognize the importance of protecting and supporting Tribal sovereignty and self-determination. As the Executive Order explains, "As we continue to support Tribal Nations, we must respect their sovereignty by better ensuring that they are able to make their own decisions about where and how to meet the needs of their communities. No less than for any other sovereign, Tribal self-governance is about the fundamental right of a people to determine their own destiny and to prosper and flourish on their own terms." These commitments build on a recognition of principles of sovereignty, sovereign immunity, and self-governance that have been repeatedly reaffirmed by the Supreme Court. *See, e.g.*, *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C., et al.*, 476 U.S. 877, 890-91 (1986); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510 (1991).

III. *Prior Guidance*

The Federal government has long recognized the unique aspects of Tribal sovereignty and Tribal sovereign immunity. Tribes themselves are not subject to Federal income tax under the Code.[2] IRS guidance on the issue in the 1960s raised questions about the extent to which section 17 corporations and section 3 corporations should share the Tribe's Federal income tax status. In response, the IRS published further guidance and issued proposed regulations in 1996 on the treatment of section 17 corporations and section 3 corporations for Federal tax purposes. *See* the notice of proposed rulemaking, *Simplification of Entity Classification Rules*, (PS–43–95) published in the *Federal Register* (61 FR 21989) on May 13, 1996 (explaining the basis for the proposed rule later adopted as §301.7701-1(a)(3)).

On December 18, 1996, the Treasury Department and the IRS published final regulations (TD 8697) in the *Federal Register* (61 FR 66584) under section 7701, known as the entity classification regulations. Those still-existing regulations at §301.7701-1(a)(3) make clear that entities formed under local laws are not always recognized as separate entities for Federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for Federal tax purposes if it is an integral part of the State. Similarly, those regulations provide that section 17 corporations and section 3 corporations are not recognized as separate entities for Federal tax purposes. The entity classification regulations, however, do not specifically address whether an organization formed under Tribal law and wholly owned by a Tribe (that is, a wholly owned Tribal entity) is recognized as a separate entity for Federal tax purposes.

The preamble to TD 8697 states that the IRS received a number of comments asking for clarification of the tax treatment of wholly owned Tribal entities. 61 FR 66584. The preamble also indicated that the Treasury Department and the IRS continued to study the issue and would issue additional guidance, if necessary. *Id.* at 66585-86.

IV. *Tribal Consultation*

Over the past several decades, Tribes have sought clarity concerning the Fed-

[2] *See* Rev. Rul. 67-284, 1967-2 C.B. 55. However, Tribes generally are subject to Federal employment taxes. Employment taxes refers to Federal Insurance Contributions Act (FICA) (consisting of both social security and Medicare taxes), Federal Unemployment Tax Act (FUTA), and Income Tax Withholding. Section 3306(c)(7) of the Code provides an exception from FUTA taxes under certain circumstances. Further, subject to applicable law, including statutes (such as section 7871 of the Code) and treaties or agreements with the United States, Tribes are subject to Federal excise taxes. *See* Rev. Rul. 94-81, 1994-2 C.B. 412.

eral tax status of Tribally chartered corporations that are wholly owned by Tribes, in part to provide certainty for Tribal economic development and to support the generation of revenue for Indian Tribal governments. In order to obtain Tribal input on the issue, and in accordance with Executive Order 13175 (November 6, 2000), "Consultation and Coordination with Indian Tribal Governments," and the Treasury Department's Tribal Consultation Policy (80 FR 57434, September 23, 2015), *superseded by* Treasury Order 112-04 (November 22, 2023), the Treasury Department and the IRS most recently held Tribal consultations on the issue on June 21 and June 22, 2023, October 8 and October 10, 2019, and a listening session on December 3, 2019.

During Tribal consultations, Tribes have explained that they view Tribally chartered corporations as an exercise of their inherent sovereign authority to generate governmental revenue, self-govern the use of that revenue according to their own laws, and self-determine the use of that revenue for their citizenry. Tribes highlighted that Tribally chartered corporations enable Tribes to create entities that meet their emerging revenue opportunities, establish guidelines for the operation of these entities that are culturally appropriate and protect Tribal assets, and dissolve them when they are unneeded. Tribes also highlighted that Tribally chartered corporations are consistent with recent Federal policy that promotes Tribal sovereignty, self-governance, and self-determination in economic development activities.

In contrast, Tribes highlighted that section 17 and section 3 corporations are not sufficient to meet their needs. The incorporation process for these entities is a lengthy multi-step Federal process that subjects Tribal authority to Federal oversight and approval, results in increased administrative costs to Tribes, and requires an act of Congress to dissolve the chartered entity.

This issue has taken on increased salience in recent years, particularly with the enactment of laws, such as Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022, that extend greater access to capital and new economic opportunities to certain governments (including Indian Tribal governments), tax-exempt organizations, and other entities. Tribes have reiterated their requests for guidance through meetings of the Treasury Tribal Advisory Committee and other Tribal consultations.

In light of the considerations of Tribal sovereignty and self-determination described previously, the Treasury Department and the IRS propose to amend the existing section 7701 regulations to make clear that entities wholly owned by Tribes and organized or incorporated under the laws of the Tribes that own them generally are not recognized as separate entities for Federal tax purposes. Accordingly, such entities generally would be viewed as one and the same as the Tribes that own them for Federal tax purposes and would therefore not be subject to Federal income tax. In addition, the Treasury Department and the IRS are proposing to amend the existing regulations under section 6417 to provide that such entities and section 17 and section 3 corporations are treated as instrumentalities of the Indian Tribal governments that own them for purposes of making an elective payment election under section 6417 (including determining eligibility for and the consequences of the election). This would mean that the wholly owned Tribal entity itself, rather than the Indian Tribal government(s) owning the entity, would make a section 6417 election for an applicable credit determined with respect to any applicable credit property held directly by the wholly owned Tribal entity.

The Treasury Department and the IRS will conduct Tribal consultation before finalizing these regulations to obtain additional input on questions involving these proposed regulations. The content of these consultations will be published in a Tribal consultation summary.

Explanation of Provisions

I. *In General*

These proposed regulations would address the Federal tax treatment of wholly owned Tribal entities (that is, entities wholly owned by Tribes and organized or incorporated exclusively under the laws of the Tribes that own them). Specifically, these proposed regulations would provide that such entities are not recognized as separate entities for Federal tax purposes (other than for purposes related to section 6417 elections described in part III of this Explanation of Provisions). The proposed regulations recognize that these entities share core characteristics with section 17 corporations and section 3 corporations, including that they are wholly owned by Tribes and benefit the Tribes by facilitating economic growth and Tribal rebuilding. Accordingly, just as section 17 corporations and section 3 corporations are not recognized as separate entities for Federal tax purposes and are thus not subject to Federal income tax on income earned in the conduct of commercial business on or off the organizing Tribe's reservation, the proposed regulations would confirm that wholly owned Tribal entities would not be recognized as separate entities for Federal tax purposes and would not be subject to Federal income tax on income earned in the conduct of commercial business on or off the organizing Tribe's reservation.

II. *Requirements*

A. Tribal law

The proposed regulations would recognize that Tribal law is established by each individual Tribe. Where multiple Tribes work together to establish an entity that is owned by more than one Tribe, each Tribe would need to provide for the entity under its own laws.

B. Wholly owned

As is the case for determining the ownership of all corporations (including a corporation wholly owned by a State or other government), the determination of whether an outside investor (a person other than a Tribe) holds stock in a Tribal entity, such that it would fail to be wholly owned by one or more Indian Tribal governments for Federal tax purposes, would take into account principles of Federal tax law, such as the substance over form doctrine, debt versus equity analyses, and the economic substance doctrine.

Under these proposed regulations, an entity could satisfy the wholly owned requirement through a multi-Tribe ownership structure, so long as the entity is orga-

nized or incorporated under each Tribe's laws. Proposed §301.7701-1(a)(4)(iii)(D) (Example 4) illustrates an example of the organizational structure of such an entity.

III. *Elective Pay*

The proposed regulations would revise the elective pay regulations to provide that, for purposes of making a section 6417 election (including determining eligibility for and the consequences of such election), entities described in proposed §301.7701-1(a)(4)(i) (that is, section 17 corporations, section 3 corporations, and wholly owned Tribal entities), would be treated as instrumentalities of Indian Tribal governments. Under existing §1.6417-1(f), section 17 corporations and section 3 corporations are treated as "disregarded entities" for purposes of section 6417, and the applicable-entity owner of a disregarded entity that directly holds applicable credit property must make a section 6417 election for applicable credits determined with respect to such property pursuant to §1.6417-2(a)(1)(ii). Treatment as instrumentalities under these proposed regulations would mean that an entity described in proposed §301.7701-1(a)(4)(i) that directly owns applicable credit property would make the section 6417 election itself, rather than its owner or owners. Such an entity generally would do so by filing a Form 990-T, *Exempt Organization Business Income Tax Return*, as described in §1.6417-1(b)(2), using its own name and employer identification number.

The Treasury Department and the IRS are proposing this rule pursuant to the Secretary's authority under section 6417(h) to issue such regulations or other guidance as may be necessary to carry out the purposes of section 6417, including guidance to ensure that the amount of the payment or deemed payment made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c) of the Code). Given that proposed §301.7701-1(a)(4)(i) would generally provide that an entity owned by multiple Tribes is not recognized as a separate entity from those Tribes for Federal tax purposes, treating the entity as a "disregarded entity" for section 6417 purposes would have required each of the entity's owners to make a section 6417 election with respect to an applicable credit determined with respect to an applicable credit property owned directly by the entity. That approach would have been administratively burdensome and complex for the Tribes that own the entity as well as for the IRS. Given the need for coordination among these Tribes in making consistent tax filings, it could also have resulted in cases in which the amount of the total payments or deemed payments claimed under section 6417 may not be commensurate with the amount of the underlying credit. In addition, even for an entity owned by a single Tribe, the entity directly owning the applicable credit property may be better positioned to fulfill the pre-filing registration and other requirements to make the section 6417 election. Accordingly, the proposed regulations are intended to simplify the filing obligations for Tribes and their wholly owned entities and ensure that the amount of any payment or deemed payment made under section 6417 will be commensurate with the amount of the credit that would be otherwise allowable.

In general, the determination of whether an entity is an agency or instrumentality is analyzed on a facts and circumstances basis. In determining whether an entity is an agency or instrumentality for Federal tax purposes, Federal courts have applied a test similar to the six-factor test in Rev. Rul. 57-128, 1957-1 C.B. 311, which generally provides guidance on whether an entity is an instrumentality for purposes of the exemptions from employment taxes under sections 3121(b)(7) and 3306(c)(7). *See, e.g., Berini v. Federal Reserve Bank of St. Louis, Eighth District,* 420 F. Supp. 2d 1021 (E.D. Mo. 2005) and *Rose v. Long Island Railroad Pension Plan,* 828 F.2d 910, 918 (2d Cir. 1987), *cert. denied,* 485 U.S. 936 (1988).

No inferences should be drawn from the instrumentality treatment in proposed §1.6417-1(c)(7) as to whether any particular entity is or is not an instrumentality in other contexts. The special rule in proposed §1.6417-1(c)(7) is informed in part by administrative considerations and would be issued under the express delegation of authority in section 6417(h) to promulgate rules that carry out the purposes of section 6417 and ensure that the amount of the payment or deemed payment made thereunder is commensurate with the amount of the underlying credit.

Proposed Applicability Dates

These proposed regulations would, upon finalization, apply to taxable years ending after October 9, 2024. The proposed regulations would also, upon finalization, generally allow an entity the option to apply proposed §301.7701-1(a)(4), including the option to apply proposed §1.6417-1(c)(7) and (f), to taxable years ending on or before October 9, 2024, provided that the Indian Tribal government(s) that own the entity also apply §301.7701-1(a)(4), and §1.6417-1(c)(7) and (f) as applicable, consistently with such entity for all such taxable years. However, this option would not be available for any taxable period for a Federal excise tax or employment tax with respect to which the entity was, as of October 9, 2024, a party to any administrative or judicial proceeding.

Until the date final regulations are published in the *Federal Register*, an entity described in proposed §301.7701-1(a)(4)(i) generally may rely on the proposed regulations for taxable years ending on or before that date, provided that the Indian Tribal government(s) that own the entity do so consistently with such entity for all such taxable years. However, an entity described in proposed §301.7701-1(a)(4)(i) may not rely on the proposed regulations for any taxable period for a Federal excise tax or employment tax with respect to which the entity was, as of October 9, 2024, a party to any administrative or judicial proceeding.

Reliance and the proposed option to apply the regulations retroactively are not provided for any taxable period for a Federal excise or employment tax subject to pending administrative or judicial proceedings as of October 9, 2024, because reliance and retroactive application of these regulations in that context could create certain unintended and technical procedural questions. This exception to reliance on the proposed regulations and the proposed option to retroactively apply these regulations is limited to the Federal excise and employment tax context because these questions would not arise in the context of a Federal income tax administrative or judicial proceeding.

Special Analyses

I. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule would neither impose substantial, direct compliance costs on Indian Tribal governments nor preempt Tribal law within the meaning of the Executive order.

II. *Executive Order 14112: Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*

Consistent with Executive Order 14112 (described previously in the Background section), these proposed regulations would further Tribal self-determination and self-governance and reduce administrative burdens by providing entities wholly owned by Tribes and organized or incorporated under the laws of the Tribes that own them with the same Federal tax treatment that applies to section 17 corporations and section 3 corporations.

III. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

IV. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these final regulations are considered general tax records under §1.6001-1(e). These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to make an elective payment election and to verify the Federal tax classification of entities described in these proposed regulations. For PRA purposes, general tax records are already approved by OMB under 1545-0047 for tax-exempt organizations and government entities.

These regulations also mention reporting requirements related to making elections under section 6417. These elections will be made by taxpayers on Forms 990-T, and credit calculations will be made on Form 3800 and supporting forms. These forms are approved under 1545-0047 for tax-exempt organizations and governmental entities.

V. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). These proposed regulations would affect entities that are wholly owned by Tribes. Additionally, no added burden is created through these proposed regulations; rather, these proposed regulations would expand the definition of an eligible entity for section 6417 of the Code but does not expand the requirements for entities to make the elective pay election. Although data is not readily available about the number of small entities that are potentially affected by this rule, it is possible that a substantial number of small entities may be affected.

To the extent the entities described in these regulations make elections under section 6417, the Treasury Department and the IRS certify the final regulatory flexibility analysis undertaken in TD 9988.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

VI. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandate Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Indian Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments or by the private sector in excess of that threshold.

VII. *Executive Order 13132: Federalism*

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

Comments and Public Hearing

Consideration will be given to comments received in Tribal consultation

and comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the "ADDRESSES" section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including the application of the proposed regulations in the context of federal employment and excise taxes. All commenters are strongly encouraged to submit comments electronically. All comments will be made available at *https://www.regulations.gov*. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing will be held on January 17, 2025, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Pursuant to Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by January 7, 2025. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by January 7, 2025, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-113628-21 and the language TESTIFY In Person. For example, the subject line may say: "Request to TESTIFY In Person at Hearing for REG-113628-21."

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-113628-21 and the language TESTIFY Telephonically. For example, the subject line may say: "Request to TESTIFY Telephonically at Hearing for REG-113628-21."

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number (REG-113628-21) and the language ATTEND In Person. For example, the subject line may say: "Request to ATTEND Hearing In Person for REG-113628-21." Requests to attend the public hearing must be received by 5 p.m. ET on January 15, 2025.

Individuals who want to attend the public hearing telephonically without testifying must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-113628-21) and the language ATTEND Hearing Telephonically. For example, the subject line may say: "Request to ATTEND Hearing Telephonically for REG-113628-21." Requests to attend the public hearing must be received by 5 p.m. ET on January 15, 2025.

The hearing will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by 5 p.m. ET on January 14, 2025.

Statement of Availability of IRS Documents

Rev. Rul. 94-81, Rev. Rul. 94-65, Rev. Rul. 94-16, Rev. Rul. 67-284, and Rev. Rul. 57-128 are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal authors of these proposed regulations are attorneys in the Office of Associate Chief Counsel (Passthroughs and Special Industries), Branch 1. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

26 CFR Part 301

Procedure and Administration

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6417-1 is amended by:

1. Revising paragraph (c) introductory text;

2. Removing the semicolon from the end of paragraphs (c)(1)(ii) and (c)(2) through (5) and adding a period in their places;

3. Removing "; and" from the end of paragraph (c)(6) and adding a period in its place; and

4. Revising paragraphs (c)(7), (f), and (q).

The revisions read as follows:

§1.6417-1 Elective payment election of applicable credits.

* * * * *

(c) *Applicable entity.* The term *applicable entity* means any entity described in paragraph (c)(1) through (7) of this section.

* * * * *

(7) An agency or instrumentality of any applicable entity described in paragraph (c)(1)(ii) or (c)(2) or (3) of this section. For purposes of making a section 6417 election (including determining eligibility for and the consequences of such election), an entity described in §301.7701-1(a)(4)(i) of this chapter is treated as an instrumentality of the Indian Tribal government(s) or subdivision(s) thereof that own(s) it.

* * * * *

(f) *Disregarded entity*. The term *disregarded entity* means an entity that is disregarded as, or not recognized as, an entity separate from its owner for Federal income tax purposes under §301.7701-1(a)(3) or §§301.7701-2 and 301.7701-3 of this chapter. S*ee* paragraph (c)(7) of this section regarding entities described in §301.7701-1(a)(4)(i) of this chapter.

* * * * *

(q) *Applicability dates*--(1) *In general*. Except as provided in paragraph (q)(2) of this section, this section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers may choose to apply the rules of §§1.6417-1 through 1.6417-4 and 1.6417-6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

(2) *Paragraphs (c)(7) and (f) of this section*. Paragraphs (c)(7) and (f) of this section apply to taxable years ending after October 9, 2024. For taxable years ending on or before October 9, 2024, an entity described in §301.7701-1(a)(4)(i) of this chapter may choose to apply paragraphs (c)(7) and (f) of this section as contained in 26 CFR part 1, revised October 9, 2024 by following the Federal tax reporting requirements in a manner consistent with those provisions for all such years, but only if the Indian Tribal government(s) that own the entity also apply paragraphs (c)(7) and (f) of this section consistently with such entity for all such taxable years.

PART 301--PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding an entry for §301.7701-1(a)(4) in numerical order to read in part as follows:

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

* * * * *

Section 301.7701-1(a)(4) also issued under 26 U.S.C. 7701(a)(40).

* * * * *

Par. 4. Section 301.7701-1 is amended by:

1. Revising paragraph (a)(3);
2. Redesignating paragraph (a)(4) as paragraph (a)(5);
3. Adding new paragraph (a)(4); and
4. Revising paragraph (f).

The revisions and addition read as follows:

§301.7701-1 Classification of organizations for federal tax purposes.

(a) * * *

(3) *Certain State and local law entities not recognized*. An entity formed under State or local law is not always recognized as a separate entity for Federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for Federal tax purposes if it is an integral part of the State.

(4) *Certain Tribal entities*--(i) *In general*. Except as provided in paragraph (a)(4)(ii) of this section, Tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124 (section 17 corporation), or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203 (section 3 corporation), are not recognized as separate entities for Federal tax purposes. Also, except as provided in paragraph (a)(4)(ii) of this section, entities wholly owned by one or more Indian Tribal governments (within the meaning of section 7701(a)(40) of the Code) and organized or incorporated exclusively under the laws of the Indian Tribal government(s) that own them (wholly owned Tribal entity) are not recognized as separate entities for Federal tax purposes.

(ii) *Elections under section 6417*. *See* §1.6417-1(c)(7) of this chapter for the treatment of section 17 corporations, section 3 corporations, and wholly owned Tribal entities described in paragraph (a)(4)(i) of this section for the purposes of making an elective payment election under section 6417 of the Code (section 6417 election), including determining eligibility for and the consequences of such election.

(iii) *Examples*. The following examples illustrate the application of paragraph (a)(4)(i) and (ii) of this section. For purposes of these examples, all references to a Tribe are references to an Indian Tribal government within the meaning of section 7701(a)(40).

(A) *Example 1*. Tribe B incorporates Corporation X pursuant to Tribe B's Corporations Ordinance, which governs the purpose, formation, and operation of commercial entities. Tribe B owns all the shares of Corporation X. Corporation X is therefore wholly owned by Tribe B and organized or incorporated exclusively under the laws of Tribe B. As a result, Corporation X is not recognized as a separate entity from Tribe B for Federal tax purposes, except for the purposes described in §1.6417-1(c)(7) of this chapter. Accordingly, Corporation X is not subject to Federal income tax. Under §1.6417-1(c)(7) of this chapter, Corporation X is treated as an instrumentality of Tribe B for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporation X, rather than Tribe B, would be the applicable entity for purposes of making a section 6417 election for any applicable credit (as defined in section 6417(b)) relating to property held or activities conducted by Corporation X.

(B) *Example 2*. Same facts as in paragraph (a)(4)(iii)(A) of this section (*Example 1),* except that the board of Corporation X, pursuant to Tribe B's Corporations Ordinance, organizes a subsidiary, Corporation Z, to pursue a limited line of new business. Corporation X owns all the shares of Corporation Z. Corporation Z is therefore wholly owned by Tribe B and organized or incorporated exclusively under the laws of Tribe B. As a result, neither Corporation X nor Corporation Z is recognized as an entity separate from Tribe B for Federal tax purposes, except for the purposes described in §1.6417-1(c)(7) of this chapter. Accordingly, Corporation Z is not subject to Federal income tax. Under §1.6417-1(c)(7) of this chapter, Corporation X and Corporation Z are each treated as an instrumentality of Tribe B for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporation Z, rather than Corporation X or Tribe B, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation Z. As in Exam-

ple 1, Corporation X would continue to be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation X.

(C) *Example 3*. Tribe B incorporates a section 17 corporation. The section 17 corporation subsequently incorporates Corporation J pursuant to Tribe B's Corporations Ordinance, which governs the purpose, formation, and operation of commercial entities. The section 17 corporation owns all the shares of Corporation J. Corporation J is therefore treated as wholly owned by Tribe B and organized or incorporated exclusively under the laws of Tribe B. As a result, Corporation J is not recognized as a separate entity from Tribe B for Federal tax purposes, except for the purposes described in §1.6417-1(c)(7) of this chapter. Accordingly, neither the section 17 corporation nor Corporation J is subject to Federal income tax. Under §1.6417-1(c)(7) of this chapter, the section 17 corporation and Corporation J are each treated as an instrumentality of Tribe B for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, the section 17 corporation, rather than Tribe B, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by the section 17 corporation. In addition, Corporation J, rather than Tribe B or the section 17 corporation, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation J. The analysis would be the same if Tribe B had organized its business as a single member limited liability company pursuant to the Tribe's business code instead of incorporating Corporation J.

(D) *Example 4*. Pursuant to their respective Tribal laws, Tribe A, Tribe B, Tribe C, and Tribe D organize Corporation K via a resolution approved by their respective Indian Tribal governments. Each Tribe owns 25% of the shares of Corporation K. Corporation K is therefore wholly owned by Indian Tribal governments and organized or incorporated exclusively under the laws of each Indian Tribal government that owns it. As a result, Corporation K is not recognized as a separate entity from the Tribes for Federal tax purposes, except for the purposes described in §1.6417-1(c)(7) of this chapter. Accordingly, Corporation K is not subject to Federal income tax. Under §1.6417-1(c)(7) of this chapter, Corporation K is treated as an instrumentality of Tribe A, Tribe B, Tribe C, and Tribe D for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporation K, rather than Tribe A, Tribe B, Tribe C, or Tribe D, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation K.

* * * * *

(f) *Applicability dates*--(1) *In general*. Except as provided in paragraph (f)(2) of this section, the rules of this section are applicable as of January 1, 1997.

(2) *Exceptions*--(i) *Paragraph (a)(4) of this section*. The rules of paragraph (a)(4) of this section apply to taxable years ending after October 9, 2024. In general, an entity may choose to apply paragraph (a)(4) of this section to taxable years ending on or before October 9, 2024, if the Indian Tribal government(s) that own the entity also apply paragraph (a)(4) of this section consistently with such entity for all such taxable years. However, an entity may not choose to apply paragraph (a)(4) of this section to any taxable period for a Federal excise tax or Federal employment tax with respect to which the entity was, as of October 9, 2024, a party to any administrative or judicial proceeding.

(ii) *Paragraph (c) of this section.* The rules of paragraph (c) of this section are applicable on January 5, 2009.

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register October 07, 2024, 4:15 p.m., and published in the issue of the Federal Register for October 09, 2024, 89 FR 81871)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 30, 2024.

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Internal Revenue Service
Washington, DC 20224

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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/*.

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