INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

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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

T.D. 10013, page 1220.

This document contains amendments to the regulations relating to the disclosure of specified return information to the Census Bureau. The amendments would ensure the efficient and appropriate disclosure of return information to the Census Bureau and would permit the disclosure of additional return information pursuant to a request from the Secretary of Commerce.

EMPLOYEE PLANS

Announcement 2024-38, page 1230.

This announcement notifies the public that the IRS intends to issue opinion letters on November 29, 2024, or as soon as possible thereafter, for § 403(b) pre-approved plans that were updated for changes with respect to the requirements of § 403(b), including the 2022 Cumulative List, and that were filed during the second remedial amendment cycle for § 403(b) pre-approved plans. This announcement also notifies the public of the date by which an adopting employer intending to maintain a § 403(b) pre-approved plan for the second cycle must adopt that plan, and announces the beginning and ending dates of the period during which an adopting employer may file for an individual determination letter under the second remedial amendment cycle. This announcement also discusses a procedural restatement rule that applies to all pre-approved plans and provides a reminder for adopting employers of § 403(b)(9) retirement income account plans of a requirement provided by § 403(b)(9).

EXEMPT ORGANIZATIONS

Announcement 2024-39, page 1231.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

INCOME TAX

Notice 2024-84, page 1229.

This notice extends the transition process for claiming a statutory exception to the elective payment phaseouts contained in section 5 of Notice 2024-9, 2024-2 I.R.B. 358. Thus, if an Applicable Entity provides an attestation described in section 5.02 of Notice 2024-9 with respect to an Applicable Credit Property the construction of which begins before the later of January 1, 2027, or the issuance of further guidance, the Department of the Treasury and the Internal Revenue Service will treat the attestation as establishing that a Domestic Content Exception is met with respect to such Applicable Credit Property.

REG-116017-24, page 1232.

These proposed regulations would provide certain administrative requirements for unincorporated organizations taking advantage of modifications to the rules governing elections to be excluded from the application of partnership tax rules. They would also require all organizations to submit additional information before making such an election. These proposed regulations would affect unincorporated organizations and their members, potentially including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election.

T.D. 10012, page 1207.

These final regulations would modify existing requirements regarding elections by certain unincorporated organizations to be excluded from the application of otherwise applicable partnership tax rules. These modifications would apply to

Finding Lists begin on page ii.

certain unincorporated organizations owned, in whole or in part, by one or more "applicable entities," including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. After making an election under the modified rules, such owners would be permitted to make elective payment elections under section 6417(a) of the Code with respect to certain property held by the unincorporated organization.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

Part I

26 CFR 1.761-2: Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

T.D. 10012

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Election to Exclude Certain Unincorporated Organizations Owned by Applicable Entities from Application of the Rules on Partners and Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations that modify existing regulations to allow certain unincorporated organizations that are owned in whole or in part by applicable entities to be excluded from the application of partnership tax rules. These regulations affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The final regulations also update certain outdated language in the existing regulations.

DATES: *Effective date*: These regulations are effective on January 19, 2025.

Applicability date: For the date of applicability, see §1.761-2(f).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, contact Cameron Williamson at (202) 317-6684 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) issued by the Secretary of the Treasury (Secretary) pursuant to the authority granted under sections 761(a), 6031(a), 6417(d) and (h), and 7805(a) of the Code (final regulations).

Section 761(a) provides, in part, an express grant of regulatory authority for section 761(a) stating, "[u]nder regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or a part of this subchapter."

Section 6031(a) provides an express grant of regulatory authority for the Secretary to prescribe in forms or regulations partnership reporting information required "for the purpose of carrying out the provisions of subtitle A."

Section 6417(d) provides several express delegations of authority to the Secretary to enforce requirements for elective payments of applicable credits under section 6417 and recapture excessive payments. Section 6417(h) provides an express delegation of authority with respect to elective payments under section 6417, stating, in part, that "[t]he Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section."

Finally, section 7805(a) 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. *Elective payment of applicable credits*

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an "applicable entity" (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an "applicable credit" (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary to provide rules for making elections under section 6417. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On March 11, 2024, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (88 FR 40528) final regulations (TD 9988) providing guidance on the section 6417 elective payment election (section 6417 regulations). Section 1.6417-2(a)(1)(iv) provides that partnerships are not applicable entities described in section 6417(d)(1)(A) or §1.6417-1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in §1.6417-1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, §1.6417-2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property (as defined in §1.6417-1(e)), through an organization that has made a valid election under section 761(a) (section 761(a) election) to be excluded from the application of the partnership tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property is treated as a separate applicable credit property owned

by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such applicable credit property.

Also on March 11, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 17613) proposed amendments (REG-101552-24) to the regulations under section 761(a) to carry out the purposes of section 6417 (proposed regulations). Generally, the proposed regulations would have amended certain provisions of §1.761-2 as in effect and contained in 26 CFR part 1 to provide that unincorporated organizations meeting certain requirements (applicable unincorporated organizations) are eligible for certain modifications (referred to in the proposed regulations as "exceptions") to the existing requirements for making a section 761(a) election. The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations.

Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rules section of this edition of the **Federal Register** a notice of proposed rulemaking (REG-116017-24) proposing to further add to and revise the provisions of §1.761-2 (November 2024 proposed regulations). The proposed revisions to the provisions of §1.761-2 by the November 2024 proposed regulations are explained in greater detail in the preamble to the November 2024 proposed regulations.

II. *Overview of section 761(a) and prior §1.761-2(a)(3)*

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities, provided that the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

As discussed in the preamble to the proposed regulations, unincorporated organizations seeking to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be availed of for the purposes listed in section 761(a)(2), that is, for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. Pursuant to the authority in section 761(a), prior §1.761-2(a)(3) provides additional requirements for an unincorporated organization to elect to be excluded from the application of subchapter K under section 761(a)(2). Specifically, prior §1.761-2(a)(3) requires that the participants in the joint production, extraction, or use of property: (i) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used (severance requirement), and (iii) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year (one-year exception). These additional regulatory requirements are hereinafter referred to as the "existing regulatory requirements" and, along with the previously discussed statutory requirements, are referred to herein as the "existing requirements" to be eligible to elect out of the application of subchapter K.

As discussed in the Summary of Comments and Explanation of Revisions, the proposed regulations would have modified some of the existing regulatory requirements for unincorporated organizations that meet certain requirements.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received 11 written comments in response to the proposed regulations. The comments are available for public inspection at *www.regulations.gov* or upon request. A public hearing on the proposed regulations was scheduled for May 20, 2024. There were no requests to speak at the scheduled public hearing. Consequently, the public hearing was cancelled. *See Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Hearing Cancellation*, 89 FR 43349 (May 17, 2024). After full consideration of the comments received, these final regulations adopt the proposed regulations with modifications in response to the comments described in this Summary of Comments and Explanation of Revisions. The provisions of §1.761-2 as amended by the final regulations are referred to as "revised §1.761-2" in this Summary of Comments and Explanation of Revisions.

Comments merely summarizing the statute or proposed regulations, recommending statutory revisions to section 761 or other statutes, addressing unrelated issues, or recommending changes to IRS forms or procedures are generally not addressed in this Summary of Comments and Explanation of Revisions or adopted in these final regulations. These comments included recommendations and questions regarding fact patterns specific to section 6417, the domestic content rules of section 45(b)(10), the credit for qualified commercial clean vehicles of section 45W, and the credit for alternative fuel vehicle refueling property of section 30C. While the Treasury Department and the IRS are studying some of those issues and intend to issue future guidance on those provisions, those recommendations and questions are unrelated to the purpose of these final regulations. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations with respect to which no comments were received are adopted without substantive change.

I. *Overview*

Proposed §1.761-2(a)(4)(ii) would have defined "applicable unincorporated organizations" as unincorporated organizations that meet several requirements. Proposed §1.761-2(a)(4)(iii) would have modified the regulatory requirements in prior §1.761-2(a)(3)(i) and (iii) for an applicable unincorporated organization that also met the regulatory requirements of prior §1.761-2(b) and (e).

Part II of this Summary of Comments and Explanation of Revisions discusses comments received concerning the general effects of a section 761(a) election. Part III of this Summary of Comments and Explanation of Revisions discusses the comments received on the definition of an applicable unincorporated organization. Part IV of this Summary of Comments and Explanation of Revisions discusses the comments received on the modifications to the existing regulatory requirements. Part V of this Summary of Comments and Explanation of Revisions discusses the applicability date of these final regulations, the elimination of certain obsolete language, and certain administrative requirements that are under consideration for organizations taking advantage of the modifications to the existing regulatory requirements. Part VI of this Summary of Comments and Explanation of Revisions summarizes two comments not addressed in these final regulations.

II. *Effects of an Election under Section 761(a)*

A. General

Subchapter K provides rules governing the taxation of partners and partnerships. When an unincorporated organization makes a valid section 761(a) election out of subchapter K, the rules of subchapter K no longer apply to that organization. As a result, for purposes of subchapter K, the unincorporated organization ceases to be a partnership and each member of the unincorporated organization is generally treated as a co-owner, that is, as directly owning its proportionate share of the organization's assets.

For example, an unincorporated organization that has made a valid section 761(a) election is not subject to section 704, which provides the rules for determining a partner's distributive share of a partnership's tax items. Instead, each member of an unincorporated organization that has made a valid section 761(a) election takes into account directly its ownership share of the organization's tax items. Accordingly, if an unincorporated organization with a valid section 761(a) election purchases depreciable property, an owner of a 30 percent interest in the organization may claim depreciation deductions as if it owned an undivided 30 percent interest in the organization's property (provided the owner is otherwise eligible for such deductions). That member cannot claim depreciation deductions beyond that member's ownership interest in the organization's property. Thus, any agreement among the members to specially allocate one member's depreciation deductions to another member would make the organization ineligible for a section 761(a) election.

One commenter asked for clarification of whether the following fact pattern is compatible with an election under section 761(a). A church (an applicable entity) forms a partnership with a nonprofit investor and a for-profit developer. The church contributes a site for energy property, which generates electricity and reduces the church's energy bill. The nonprofit investor makes grants and loans to the organization and is repaid by virtue of renewable energy credits or net metering from the clean energy property. The for-profit developer enters into a contract to maintain the system in exchange for a fee.

The facts described in the comment letter do not provide sufficient information to determine whether this situation is compatible with a section 761(a) election. If the investor receives all payments in its capacity as a lender and the for-profit developer receives its profits in its capacity as a third-party service provider, there might not be an unincorporated organization at all. If there is an unincorporated organization and it intends to make a section 761(a) election, each of its members must reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used. If the investor or developer receives payments in excess of its pro rata ownership interests, this requirement will not be met. Moreover, if the contributions mentioned in this situation are intended to be non-recognition transfers for Federal income tax purposes, the contributing members would generally need to make such contributions under section 721(a), which is part of subchapter K. However, if a section 761(a) election is made, the organization is not subject to subchapter K, and thus, section 721(a) is inapplicable to transfers to the organization. Without section 721(a), the transfers would generally be taxable events.

One commenter asked how certain capital stacking combinations (including loans, forgivable loans, and grants) affect an organization's eligibility to make a section 761(a) election. To make a valid section 761(a) election, an unincorporated organization must comply with the requirements of section 761(a) and revised §1.761-2. Provided that those requirements are met, the structure of an organization's capital stack would not appear to preclude it from making a valid section 761(a) election. Federal income tax law governs the treatment of these arrangements for purposes of determining whether an arrangement violates the requirements of section 761(a). For example, loans between members of the organization will be treated as debt to the extent they are treated as debt under Federal income tax law. Likewise, loans by a member to an organization would not be treated as a partnership liability under section 752, but a loan to each member of the organization in proportion to the member's ownership interest.

One commenter asked that applicable entities who are members in an applicable unincorporated organization that makes a 761(a) election be permitted to claim all applicable tax credit bonuses and adders. Bonus credit amounts, such as amounts for applicable credit properties located in energy communities, apply to property co-owned through an applicable unincorporated organization. The Treasury Department and the IRS have determined that no change to the final regulations is required to clarify this issue.

B. Effect of a Section 761(a) Election on Sections of the Code Outside of Subchapter K

One commenter requested a discussion of the effects of a section 761(a) election

on provisions of the Code outside of subchapter K that reference partnerships, including section 6417. A detailed discussion of the effects of a section 761(a) election on provisions of the Code outside of subchapter K would require a careful examination of numerous provisions of the Code apart from those relevant to these final regulations and is not necessary for purposes of these final regulations. However, the application of a section 761(a) election to section 6417 is fundamental to the purpose of these final regulations, which is to carry out the purposes of section 6417 and thus, is addressed herein.

An organization with a valid section 761(a) election may be treated as a partnership for purposes of sections of the Code outside of subchapter K. In *Bryant v. Commissioner*, 46 T.C. 848 (1966), *aff'd*, 399 F.2d 800 (5th Cir. 1968), the Tax Court concluded that an organization that made a section 761(a) election was still a partnership for purposes of other parts of the Code, including the $50,000 investment tax credit limit on partnership assets provided by then section 48(c)(2)(D) of the Code. *See also Cokes v. Commissioner*, 91 T.C. 222 (1988) (section 761 election did not affect partnership status under the self-employment tax provisions of section 1402(a) of the Code); *Madison Gas and Electric Company v. Commissioner*, 72 T.C. 521 (1979), *aff'd*, 633 F.2d 512 (7th Cir. 1980) (notwithstanding a section 761 election, the startup costs of a joint venture were attributable to the partnership business and were not deductible under section 162(a) of the Code as the ordinary and necessary business expenses of the individual partners).

Though section 6417 is not in subchapter K, a section 761(a) election affects whether an entity is treated as a partnership for purposes of section 6417. Section 6417(h) provides that the Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of section 6417. Pursuant to this broad authority, the Treasury Department and the IRS published §1.6417-2(a)(1)(iii), which provides that if an applicable entity is a co-owner in an applicable credit property through an organization that has made a valid section 761(a) election, then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an elective payment election for the applicable credits determined with respect to such applicable credit property. This means that a section 761(a) election effectively causes an unincorporated organization not to be treated as a partnership for purposes of section 6417, including section 6417(c). Thus, the effect of a valid section 761(a) election for purposes of section 6417 is that each member of the organization is treated as directly owning its proportionate share of the applicable credit property. As a result, each applicable entity member of the organization may make an elective payment election (or, if not an applicable entity member, a transfer election under section 6418) with respect to its proportionate share of the applicable credit property.

Another commenter requested confirmation that a Tribal Energy Development Organization that makes a section 761(a) election is not a partnership for purposes of sections 168(h)(5) and (6) and 50(b)(3).

Section 168(h) describes tax-exempt use property (generally, certain property leased to a tax-exempt entity), the cost recovery of which is subject to special rules. Section 168(h)(5) generally provides that the determination of whether property leased to a partnership is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share as being leased to such partner. Section 168(h)(6) generally provides that, if any property which is not tax-exempt use property is owned by a partnership that has as partners both a tax-exempt entity and a person who is not a tax-exempt entity, an amount equal to such tax-exempt entity's proportionate share of such property is treated as tax-exempt use property. This rule applies only if any allocation to the tax-exempt entity of partnership items is not a "qualified allocation," which (i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and (ii) has substantial economic effect within the meaning of section 704(b)(2). *See* section 168(h)(6)(B). Section 50(b)(3) and (4) preclude certain property used by tax-exempt organizations, governmental entities, and foreign persons from qualifying for an investment tax credit. For these purposes, section 50(b)(4)(D) provides that rules similar to those in section 168(h)(5) and (6) apply.

The existence of a partnership for purposes of these sections does not change the amount of depreciation deductions attributable to each member of an unincorporated organization that has validly made a section 761(a) election. A valid section 761(a) election requires the shares of property leased to or owned by an organization to be treated as leased to or owned by the members of the organization in proportion to their shares of the organization. This is how partnership property would be treated under section 168(h)(5) and would cause all allocations to the partners to be treated as "qualified allocations" for purposes of section 168(h)(6). Similarly, the IRS has determined in other areas of the law that co-owners of property may make independent elections with respect to deductions affecting their taxable income. *See* Rev. Rul. 83-129, 1983-2 C.B. 105, in which the IRS ruled that the co-owners of mineral leases that make a section 761(a) election may independently elect to deduct or capitalize their shares of mining development costs under section 616 of the Code; *see also* Rev. Rul. 81-261, 1981-2 C.B. 60, where the IRS noted that if a partnership makes a section 761(a) election, each partner is deemed to own directly its proportionate share of the partnership property for purposes of computing depreciation. Moreover, in the case of an applicable entity that makes an election under section 6417(a), section 6417(d)(2)(A) provides that applicable credits are determined without regard to section 50(b)(3) and (4)(A)(i).

III. *Applicable Unincorporated Organizations*

A. Applicable Entity Owner

Proposed §1.761-2(a)(4)(ii)(A) would have required an applicable unincorporated organization to be owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and §1.6417-1(c). The Treasury Depart-

ment and the IRS received no comments related to this section and adopt the proposed language without changes.

B. Joint Operating Agreements

Proposed §1.761-2(a)(4)(ii)(B) would have provided that an applicable unincorporated organization must be an organization the members of which enter into a joint operating agreement (JOA) in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits. Proposed §1.761-2(a)(4)(ii)(C) would also have provided, in part, that an applicable unincorporated organization must be organized pursuant to a JOA.

1. General

Commenters requested more information about the types of JOAs required by these provisions. Some commenters requested examples of permissible JOAs, and another commenter requested identification of any JOA provisions that would "create issues" for a JOA. One commenter asked whether JOAs that satisfy the requirements of §1.761-2(a)(3) would also satisfy the requirements of proposed §1.761-2(a)(4)(ii)(B) and (C) and requested that any specific rules applicable to JOAs solely for purposes of the proposed regulations apply prospectively so as to avoid any uncertainty with respect to existing JOAs.

As used in the proposed regulations, the term "joint operating agreement" is intended to refer to agreements similar to those used by organizations that made an election under section 761(a) prior to the proposed regulations. Such agreements typically provide the terms by which the members of the unincorporated organization will meet the existing requirements to make a section 761(a) election. JOAs should continue to serve this purpose under the final regulations, regardless of whether an applicable unincorporated organization holds its property in an entity organized under local law. Accordingly, as a general matter, a JOA that satisfies the requirements of revised §1.761-2(a)(1) and (3) will satisfy the requirements in revised §1.761-2(a)(4)(ii)(B) and (C), provided that the organization to which that JOA applies satisfies the existing regulatory requirements, as modified by revised §1.761-2(a)(4)(iii), if applicable. Because the final regulations do not change the rules currently applicable to JOAs, these final regulations do not need to make such rules apply prospectively. For the same reason, further clarification of the JOA requirements is unnecessary.

2. Right to Pro Rata Share

Commenters requested clarification of how credits and ownership interests would be allocated when members of an unincorporated organization reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits.

Pursuant to proposed §1.761-2(a)(4)(ii)(B), each member of an applicable unincorporated organization would have been required to reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits. The determination of each member's ownership interest of an unincorporated organization (and, accordingly, each member's proportionate share of property produced, extracted, or used) must be made by the members and based on their ownership interests in the same manner as if they were co-owners in the underlying properties.

To illustrate, a co-owner of 40 percent of an unincorporated organization that has made a section 761(a) election must reserve the right separately to take in kind or dispose of its 40 percent pro rata share of the property produced, extracted, or used by the co-owners. This is true even when the members of an applicable unincorporated organization own property through an entity, as permitted by revised §1.761-2(a)(4)(iii)(A). Example 1 has been added in revised §1.761-2(a)(5)(i) to illustrate the general rule.

One commenter requested clarification that renewable energy certificates (RECs) produced through the generation of clean energy qualify as "similar credits" for these purposes. The Treasury Department and the IRS clarify that RECs are included as "renewable energy credits or similar credits" pursuant to revised §1.761-2(a)(4)(ii)(B) and thus, each member of an unincorporated organization must reserve the right separately to take in kind or dispose of their pro rata shares of any RECs generated as a result of the organization's activities.

3. Joint Marketing

Some commenters asked whether specific JOA provisions or activities would violate requirements that apply to applicable unincorporated organizations, including that the organization's members do not jointly sell services or property produced or extracted. One commenter asked whether appointing a manager, creating an ownership committee, having expense-sharing agreements or incurring project-level debt would violate the existing requirements to make a section 761(a) election. Another commenter requested clarification that a managing member or general partner-equivalent (presumably, if the unincorporated organization takes advantage of the modification in proposed §1.761-2(a)(4)(iii)(A)) can conduct normal project management functions for an unincorporated organization without violating the joint marketing requirement. That commenter requested, in the alternative, a "roadmap" setting forth how a managing member or general partner can comply with the joint marketing requirement in a practical manner. The same commenter also requested allowing representatives of an unincorporated organization to perform pre-filing and other ministerial services on behalf of the entities jointly owning applicable credit property.

An applicable unincorporated organization must meet all applicable requirements, including the existing requirements with the modifications contained in these final regulations, to elect out of subchapter K under section 761(a) and to maintain a section 761(a) election. Generally, the members of an unincorporated organization are permitted to have a representative handle management and ministerial duties typical of a managing member of a limited liability company (LLC) or general partner of a limited partnership

without violating these requirements. The Treasury Department and the IRS understand that representatives with such duties may be required by local law for entities that may hold the organization's property under §1.761-2(a)(4)(iii)(A) of these final regulations. These final regulations, however, do not provide a "roadmap" for permissible arrangements or rights and duties of such representatives as the list would not be exhaustive and could cause unintentional inferences to be drawn.

One commenter proposed allowing an applicable entity to direct some or all of its elective payments of applicable credit amounts under section 6417 to a separate account jointly owned by the applicable entity and other members of an applicable unincorporated organization to pay expenses directly related to the underlying applicable credit property's co-ownership. The commenter suggested applying rules similar to those applicable to assignments of payments under section 1603 (regarding grants for specified energy properties in lieu of tax credits) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009), including that each payment be assigned to a bank or other financing institution, that the assignment cover all amounts payable and not be subject to further assignment (except that any assignment may be made to one party acting as an agent or trustee for the co-owners), and that the assignee file a Notice of Assignment.

As already discussed, §1.6417-2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property through an organization that has made a valid section 761(a) election, then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an election under section 6417(a) for the applicable credits determined with respect to such applicable credit property. When an applicable entity makes an election under section 6417(a), such entity is treated as making a payment against the tax imposed by subtitle A of the Code. If this payment causes the entity to have an "overpayment" of tax in a taxable year, section 6402(a) generally provides that the entity may receive a refund equal to the amount of the overpayment over the entity's tax liability. This refund must be made to the person who made the overpayment (i.e., the applicable entity). If that applicable member is a partnership or S corporation, section 6417(c)(1)(A) specifies that the payment for such election is made to the partnership or S corporation that made the section 6417(a) election. Accordingly, similar to the general rule under section 6417(a), refunds or payments under section 6417(c) generally cannot be paid to accounts in the name of someone other than the entity making the election. A valid section 761(a) election does not affect the application of this general rule and, therefore, these final regulations do not adopt the commenter's proposal.

C. Purpose of Organization

Proposed §1.761-2(a)(4)(ii)(C) would have provided that an organization is an applicable unincorporated organization if it "is organized exclusively to produce electricity from its applicable credit property (as defined in §1.6417-1(e)) and with respect to which one or more applicable credits listed in section 6417(b)(2), (4), (8), (10), and (12) is determined." The scope of this rule was intended to remove certain impediments for these types of applicable unincorporated organizations that would otherwise comply with existing requirements. The Treasury Department and the IRS sought comments on the scope and requirements of the proposed regulations, including whether modifications similar to those in proposed §1.761-2(a)(4)(iii) are needed for applicable entities that own applicable credit properties that do not produce electricity.

Commenters generally recommended that the modifications in proposed §1.761-2(a)(4)(iii) are also needed for organizations organized to own applicable credit property with respect to which any other applicable credit listed in section 6417(b) is determined. Some commenters requested clarity that certain facilities, especially battery storage facilities, "produce electricity" for purposes of the definition of an applicable unincorporated organization. One commenter asserted that the "non-generative" credits from section 6417(b) that were not included in proposed §1.761-2(a)(4)(ii)(C) could be claimed by organizations "availed of… for the joint…use of property" and that such organizations should therefore be permitted to make a section 761(a) election if other existing requirements are met. The same commenter requested clarification that certain activities with respect to applicable credits, including time-limited delegations of relevant powers, would not violate the existing requirements to make a section 761(a) election. Another commenter asked for clarification that common, non-electricity revenue streams related to jointly owned projects, such as revenues from the sale of capacity and ancillary services, do not violate the requirement that an organization must be organized exclusively to produce electricity.

The Treasury Department and the IRS agree that organizations formed to own applicable credit property with respect to which any applicable credits (including non-generative credits) are determined should be permitted to apply the modifications to the existing section 761(a) rules contained in the proposed regulations. Section 761(a)(2) refers to organizations availed of "for the joint production, extraction, or use of property," which is not limited to activities that produce electricity. Accordingly, pursuant to the authority in sections 761(a) and 6417(h), the final regulations revise the definition of an applicable unincorporated organization to include organizations organized exclusively to own and operate applicable credit property (as defined in §1.6417-1(e)). The adoption in the final regulations of this definition of applicable unincorporated organization should not be read to imply that any particular factual arrangement permits a valid section 761(a) election. To make a valid section 761(a) election, an unincorporated organization, including an applicable unincorporated organization, must meet all the requirements of section 761(a) and the regulations thereunder.

D. Section 6417 Election

Proposed §1.761-2(a)(4)(ii)(D) would have provided that an unincorporated organization is an applicable unincorpo-

rated organization only if one or more of its applicable entity members will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property.

One commenter recommended extending the modifications in proposed §1.761-2(a)(4)(iii) to organizations for which no applicable entity member will make an election under section 6417. These final regulations are of limited scope and are promulgated, in part, pursuant to the authority in section 6417(h) to carry out the purposes of section 6417 by facilitating joint-ownership arrangements of applicable credit property by applicable entities. These final regulations do not adopt this commenter's recommendation because it is not necessary for purposes of these final regulations.

E. Other Requirements

Proposed §1.761-2(a)(4)(ii) would have provided that an applicable unincorporated organization is an unincorporated organization described in prior §1.761-2(a)(1) that meets the requirements of proposed §1.761-2(a)(4)(ii)(A) through (D). The reference to prior §1.761-2(a)(1) was intended to emphasize the statutory requirements under section 761(a) and prior §1.761-2(a)(1) that: (1) the members of the unincorporated organization must be able to compute their income without the necessity of computing partnership income, and (2) the unincorporated organization must not be a syndicate, group, pool, or joint venture which is classifiable as an association, or operate under an agreement which creates an organization classifiable as an association. For clarity, the final regulations remove the reference to prior §1.761-2(a)(1) in proposed §1.761-2(a)(4)(ii) and include the requirements of prior §1.761-2(a)(1) as revised §1.761-2(a)(4)(ii)(E) and (F). In the final regulations, therefore, an applicable unincorporated organization is an unincorporated organization that meets the requirements of revised §1.761-2(a)(4)(ii)(A) through (F).

One commenter requested that a Tribal Energy Development Organization (TEDO) be permitted to make an elective payment election regardless of its partnership status and be permitted to make special allocations. A TEDO that is formed as a partnership and meets the requirements may make a 761(a) election. Section 761 does not apply, however, to entities formed as corporations. In addition, special allocations are inconsistent with a section 761(a) election, which is available under the statute only to organizations that satisfy the severance requirement and the members of which can compute their income without the necessity of computing partnership taxable income. Accordingly, the final regulations do not adopt these requested changes.

Another commenter requested clarity about the eligibility of a "partnership flip" structure to make a section 761(a) election. Generally, these structures involve allocations of income, gains, losses, deductions, or credits that change at some point after the partnership has been formed. In the commenter's proposed structure, a taxable member of an unincorporated organization does not control the organization but owns a profits interest in the organization that allows the member to earn preferred returns over the course of its investment. The commenter suggested that this type of member should be permitted to individually elect out of partnership tax treatment under subchapter K, and then elect back into partnership treatment under subchapter K after it has recouped its investment.

Partnership flip structures, such as the one described by the commenter, violate the existing statutory requirements for electing out of subchapter K, even as modified by proposed §1.761-2(a)(4)(iii). This is because such structures provide members with disproportionate amounts of income, gains, losses, deductions, or credits and thereby require an unincorporated organization to compute partnership taxable income to determine each member's share of the organization's income. These arrangements are also incompatible with the severance requirement, under which members must reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used because members do not have a determinate "share" of the applicable credit property. For these reasons, the Treasury Department and the IRS clarify that partnership flip structures are not eligible to make a section 761(a) election.

IV. *Specified Modifications for Applicable Unincorporated Organizations*

A. Modified Co-ownership Requirement

For applicable unincorporated organizations, proposed §1.761-2(a)(4)(iii)(A) would have modified the co-ownership requirement such that the participants in the applicable unincorporated organization would be permitted to own applicable credit property through an unincorporated organization that is a legal entity, other than one treated as a corporation under any provision of the Code (modified co-ownership requirement).

One commenter requested confirmation whether the following situation is compatible with an election under section 761(a). A tax-exempt entity forms an LLC to raise money and serve as a special purpose vehicle to own and operate a clean energy project. The tax-exempt entity then sells equity securities in the LLC to investors. Prior to submitting the pre-filing registration with the IRS, the LLC makes an election under section 761(a). The tax-exempt entity or operator then decides if, and when, investors should be paid dividends based on their fractional ownership.

This situation is inconsistent with the modified co-ownership requirement. Organizations that have made a section 761(a) election do not pay dividends for Federal income tax purposes. Because each member of such organization is generally treated as directly owning its proportionate share of the organization's assets, each member is entitled to payments or credits with respect to the member's share of property produced, extracted, or used, regardless of whether any other member would have approved the distribution of such amounts.

B. Joint Marketing Modification and Agent Delegation Rule

For applicable unincorporated organizations, proposed §1.761-2(a)(4)(iii)(B) would have modified the joint marketing requirement in prior §1.761-2(a)(3)(iii) to provide that a delegation of authority to sell the participant's share of the property produced may allow the delegee to enter into contracts the duration of which exceeds the minimum needs of the indus-

try and may be for longer than one year (the joint marketing modification), provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year (the agent delegation rule). Proposed §1.761-2(a)(4)(vi) would have provided an example illustrating this modification to the existing regulatory requirements, in which each member of an unincorporated organization grants to the same agent a one-year delegation (not exceeding the minimum needs of the industry) of the member's authority to sell the member's share of electricity produced by the organization. The agent commits each member to a 15-year power purchase agreement (PPA). Because the delegation of authority is for a period no longer than one year, the requirements of proposed §1.761-2(a)(4)(iii)(B) are met.

Commenters requested clarification on several issues relating to the joint marketing modification. Some commenters asked whether two or more members of an applicable unincorporated organization that has made a section 761(a) election may sell their share of the organization's output in the same contract. Some commenters also asked whether the 15-year period for the contract in the example is intended to serve as a safe harbor or limitation on the duration of such agreements.

Provided that the agent delegation rule and all other requirements under section 761(a) are satisfied, the joint marketing modification allows members of an applicable unincorporated organization to enter into contracts of any duration. Multiple members of the same applicable unincorporated organization may be party to the same contract. Members can also choose to sell their shares without a multi-year contract. The example merely illustrates the joint marketing modification and is not intended to be a safe harbor. No clarification is required to the joint marketing modification in the final regulations.

Commenters also requested clarification of the agent delegation rule. One commenter asked whether an agent would be subject to the rule if it was an Indian Tribal government or other applicable entity. Some commenters suggested eliminating the one-year limitation on agent delegations or allowing agent delegations to automatically renew after each year. One commenter suggested that certain organizations would need to sell their output into an organized market rather than pursuant to a fixed PPA. In this situation, according to the commenter, authority to sell the output for each applicable entity may need to be pursuant to an agreement that automatically renews annually. Another commenter suggested that the one-year limitation on agent delegations will harm applicable entities without technical expertise because non-applicable entities with their own expertise will not require an agent and could be able to take advantage of an applicable entity that is only able to use an agent for one year. Another commenter asked for clarification that a member of an unincorporated organization may delegate powers to an agent without limitation as long as no other member makes such a delegation.

The purpose of the agent delegation rule is to fulfill the statutory requirement in section 761(a)(2) that no organization making a section 761(a) election is formed "for the purpose of selling services or property produced or extracted." This is a prohibition on joint marketing; accordingly, any member of an unincorporated organization may have an agent for any duration of time, provided that the agent does not represent more than one member of the applicable unincorporated organization. The agent delegation rule applies to any person or group of people acting on behalf of more than one member of an unincorporated organization, regardless of their status as an applicable entity.

The longstanding one-year exception to the joint marketing requirement in the existing regulations reflects a balancing of the statutory language with commercial necessities, and the proposed regulations reflected a similar balancing. Section 761(a)(2) does not permit an electing organization to conduct sales through an agent with indefinite authority on behalf of multiple members. Such a structure is necessarily "availed of…for the purpose of selling services or property produced or extracted" and is not eligible to elect out of subchapter K. These final regulations, therefore, do not adopt the suggestions to eliminate the agent delegation rule or allow agent delegations to automatically renew. However, in any given year, an agent may be delegated authority on terms identical to those in a past year, provided that the delegation of authority to act is not for a period of time that exceeds the minimum needs of the industry and each member delegating authority to that agent consents to those terms in writing at least once per year. Example 3 has been added in revised §1.761-2(a)(5)(iii) to illustrate this rule.

One commenter requested that the phrase "minimum needs of the industry" be either clarified or deleted. That phrase is intended to be fact-sensitive; like the rest of the joint marketing requirement, the phrase is intended to balance statutory requirements with commercial necessities. These final regulations, therefore, do not adopt the commenter's request to clarify or eliminate it.

C. Specific Examples

Several commenters generally asked for more examples showing applications of the proposed regulations. In response, the Treasury Department and the IRS have added two examples to the final regulations.

V. *Additional Information*

A. Applicability date

Except as provided in §1.761-2(d), these final regulations apply to taxable years ending on or after March 11, 2024, the date on which the proposed regulations were published in the **Federal Register**. An applicable unincorporated organization that validly made a section 761(a) election meeting the requirements of these final regulations for a taxable year ending on or after March 11, 2024, will be treated as having made a valid section 761(a) election even if the election was made prior to the publication of these final regulations in the **Federal Register**.

B. Administrative Requirements

The preamble to the proposed regulations noted that the Treasury Department and the IRS were considering certain rules

to prevent abuse of the modifications in proposed §1.761-2(a)(4)(iii). One rule described in the preamble to the proposed regulations would have prevented the deemed election rules in prior §1.761-2(b)(2)(ii) from applying to any unincorporated organization relying on a modification in proposed §1.761-2(a)(4)(iii). One commenter recommended against adopting such a rule, which the commenter believed would be inconsistent with the goals of the proposed regulations and increase the likelihood of inadvertent disallowances of section 761(a) elections in non-abusive situations.

Although these final regulations do not adopt any rules regarding deemed elections, more administrative guidance is needed under section 761(a) to fulfill the purposes of section 6417. As a result, concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rules section of this edition of the **Federal Register** the November 2024 proposed regulations under section 761(a) (REG-116017-24), which would provide rules affecting the validity of elections under section 761(a) by applicable unincorporated organizations whose elections would not have been valid without the application of revised §1.761-2(a)(4)(iii).

C. Obsolete language

Section 1.761-2(b)(3)(i) provides, in part, that an application for permission to revoke a section 761(a) election must be submitted to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply. This language no longer reflects the correct procedure for obtaining permission to revoke a section 761(a) election and is therefore eliminated by these final regulations. The November 2024 proposed regulations would instead provide that such an application must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024-1 or successor guidance. Section 1.761-2(b)(3)(i) also provides, in part, that a section 761(a) will be effective unless a member of the organization sends proper notice to the Commissioner "within 90 days after the formation of the organization (or by October 15, 1956, whichever is later)…". The final regulations would strike the parenthetical language to update and streamline the paragraph.

VI. *Comments That Are Not Addressed in These Final Regulations*

Two comments received were related to section 761 but outside the scope of these final regulations. These comments are summarized in this Part VI.

A. Implementation

One commenter asked for clarification of how audits of joint structures would take place, including by identifying the specific parts of Treasury and the IRS involved in such audits and the standard of review for such audits. Another commenter requested the development of educational materials, "office hours," and other guidance to improve understanding of the regulations and uptake of applicable credits. Another commenter requested that the Treasury Department and the IRS provide clear rules for the pre-registration filing process for applicable credit property co-owned by taxpayers making transferability elections. These final regulations do not provide information about audit procedures or the development of further guidance, but the Treasury Department and the IRS will continue to monitor the elective payment process to determine whether there are areas in which more efficiencies can be created.

B. Tribal organizations

One commenter noted that wholly owned Tribal corporations appear to be incapable of making an election under section 761(a) because such entities are corporations for Federal tax purposes. The treatment of entities wholly owned by Tribal governments is addressed by a separate rulemaking and is therefore outside the scope of these final regulations. For information on how to provide comments in response to that separate rulemaking, see the notice of proposed rulemaking (REG-113628-21), *Entities Wholly Owned by Indian Tribal Governments*, published in the *Federal Register* (89 FR 81871) on October 9, 2024.

Special Analyses

I. *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.

II. *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.

These final regulations mention reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to elect out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

Unincorporated entities meeting the requirements outlined in §1.761-2(a)(4) of these final regulations satisfy relevant reporting requirements by submitting a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income*, containing, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under §1.761-2(a)(1) and either §1.761-2(a)(2) or (3); a statement that all of the members

of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained). These requirements and associated forms are already approved by OMB under 1545-0123 for business filers. These final regulations are not changing or creating new collection requirements not already approved by OMB.

The recordkeeping requirements mentioned in these final regulations are considered general tax records under §1.6001-1(e). These records are required for the IRS to validate that electing taxpayers have consistently met the regulatory requirements outlined in §1.761-2. For PRA purposes, general tax records are already approved by OMB under 1545-0123 for business filers and 1545-0047 for tax-exempt organizations.

III. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies that the final 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 final regulations would affect unincorporated organizations that elect out of subchapter K in connection with an election under section 6417, as well as the members of such organizations.

Data is not readily available about these organizations. Such organizations could not have made an election out of subchapter K under the preexisting regulations, so information about existing organizations that have made section 761(a) elections is not instructive.

Even if these final regulations affect a substantial number of small entities, such impact will not be significant. The final regulations do not make it more costly to make or maintain an election under section 761(a).

These final regulations do not change the procedural requirements under §1.761-2(b) for making an election under section 761(a). Other than to conform to modern formatting conventions, the final regulations would amend §1.761-2(b) only by adding a parenthetical to clarify that in making a valid section 761 election, which requires attaching certain statements to a Form 1065 as required in accordance with the preexisting regulations, §1.761-2(a)(4) should be taken into account, as applicable, with regard to the required statement that the organization qualifies under §1.761-2(a)(1) and either §1.761-2(a)(2) or (3) "(taking into account §1.761-2(a)(4), as applicable)". Otherwise, an unincorporated organization making an election under these final regulations would not be required to submit anything additional or different than required under the preexisting version of §1.761-2(b).

These final regulations impose no new ongoing compliance costs. Though any unincorporated organization that has made an election under section 761(a) should ensure that it remains qualified under §1.761-2(a)(1) and either §1.761-2(a)(2) or (3) (taking into account §1.761-2(a)(4), as applicable), the final regulations do not add to this obligation. In fact, these final regulations could make it simpler for certain unincorporated organizations to stay qualified, given their joint operating agreements that satisfy the modified co-ownership and severance requirements and multi-year contracts that satisfy the modified joint marketing requirement.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

IV. *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 Tribal government, in the aggregate, or by the private sector, of $100 million (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.

V. *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 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.

VI. *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. These final rules do not have substantial direct effects on one or more federally recognized Indian tribes and do not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on April 5, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 761(a) proposed rules published on March 11, 2024, which informed the development of these final regulations.

VII. *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*

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) 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." As section 1 of 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). 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. These final regulations would further Tribal self-determination and self-governance and reduce administrative burdens by providing Tribes the ability to directly make section 6417 elections for applicable credit property held through applicable unincorporated organizations provided all applicable statutory and regulatory requirements are satisfied.

VIII. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs has designated this rule as a "major rule," as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

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

Drafting Information

The principal author of these final regulations is Cameron Williamson. 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.

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 is amended by revising the entry for §1.761-2 to read in part as follows:

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

* * * * *

Section 1.761-2 also issued under 26 U.S.C. 446(b), 761(a), 6031(a), 6417(d), and 6417(h).

* * * * *

Par. 2. Section 1.761-2 is amended by:

a. Revising and republishing paragraphs (a)(1), (a)(2)(i), and (a)(3)(i);

b. Adding paragraphs (a)(4) and (5);

c. Revising and republishing paragraphs (b)(1) and (2), (b)(3)(i), (c), and (e); and

d. Adding paragraph (f).

The revisions and additions read as follows:

§1.761-2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(1) *In general*. Under the conditions set forth in this section, an unincorporated organization described in paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) may be excluded from the application of all or a part of the provisions of subchapter K of chapter 1 of the Internal Revenue Code (subchapter K). Such organization must be availed of for investment purposes only and not for the active conduct of a business, or for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. The members of such organization must be able to compute their income without the necessity of computing partnership taxable income. Any syndicate, group, pool, or joint venture which is treated as a corporation for Federal tax purposes does not fall within the provisions in this paragraph (a)(1).

(2) * * *

(i) Own the property as co-owners;

* * * * *

(3) * * *

(i) Own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights; and

* * * * *

(4) *Modifications for certain joint ownership arrangements of applicable credit property*—(i) *Scope*. Paragraph (a)(4)(iii) of this section provides certain modifications to specified rules in paragraph (a)(3) of this section in the case of an applicable

unincorporated organization meeting the requirements of paragraph (a)(4)(ii) of this section.

(ii) *Applicable unincorporated organization*. For purposes of this section, an *applicable unincorporated organization* is an unincorporated organization:

(A) That is owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and §1.6417-1(c);

(B) The members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits;

(C) That, pursuant to the joint operating agreement, is organized exclusively to own and operate applicable credit property (as defined in §1.6417-1(e));

(D) For which one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property;

(E) The members of which are able to compute their income without the necessity of computing partnership taxable income; and

(F) Which is not a syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association.

(iii) *Specified modifications for applicable unincorporated organizations*. Solely for purposes of an election under section 761(a) by an applicable unincorporated organization that meets the requirements of paragraphs (b) and (e) of this section:

(A) The requirement in paragraph (a)(3)(i) of this section is modified such that the participants are permitted to own the applicable credit property through an unincorporated organization that is an entity, other than one that is treated as a corporation for Federal tax purposes; and

(B) The requirement in paragraph (a)(3)(iii) of this section is modified such that the delegation of authority to sell the participant's share of the property produced or used may allow the delegee to enter into contracts the duration of which exceeds the minimum needs of the industry and may be for more than one year, provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year.

(5) *Examples.* The following examples are intended to illustrate the principles of this section.

(i) *Example 1*—(A) *Facts*. G and H enter into a joint operating agreement to own and operate a facility that will produce solar energy. G, an applicable entity, is entitled under the joint operating agreement to take in kind or dispose of 40% of the energy produced by the unincorporated organization and H, which is not an applicable entity, is entitled to the remaining 60%. G and H form LLC, a limited liability company, to hold the solar energy property that G and H intend to operate pursuant to the joint operating agreement. In accordance with the joint operating agreement, G owns a 40% ownership interest in LLC and H owns the remaining 60% ownership interest. G will sell its share of energy produced by the facility in a manner designed to generate applicable credits under section 45(a) and will make an election under section 6417(a) with respect thereto. LLC makes a valid election under section 761(a) to be excluded from subchapter K.

(B) *Analysis*. G will be entitled to any credits under section 45(a) generated by its sale of energy produced by LLC that G has the right to take in kind or dispose of (which, under the joint operating agreement, is 40% of the energy produced by LLC). Assuming all other requirements are met, G will be able to make an elective payment election under section 6417 for the applicable credits determined with respect to its ownership share of the solar energy property.

(ii) *Example 2*—(A) *Facts*. T is an Indian Tribal government as defined in §1.6417-1(c) and an applicable entity. Through a limited liability company organized under T's Tribal law (TLLC), T and Y own and operate applicable credit property that will generate electricity the sale of which will generate applicable credits under section 45(a). TLLC is not treated as an association taxable as a corporation for Federal tax purposes and no election under §301.7701-3 of this chapter has been made to treat TLLC as such. T and Y enter into a joint operating agreement with respect to the ownership and operation of the applicable credit property in which each of T and Y reserve the right separately to take in kind or dispose of their pro rata shares of property produced, extracted, or used and any associated renewable energy credits or similar credits. TLLC is formed exclusively to own and operate an applicable credit property with respect to which section 45(a) credits will be determined. On January 1st of year 1, T and Y enter into delegation agreements with Q that delegate T's and Y's authority to Q to sell the electricity generated by T's and Y's shares of the applicable credit property. The term of the delegation agreements is one year, which does not exceed the minimum needs of the industry. On June 1st of year 1, Q enters into a power purchase agreement with Utility on T's and Y's behalf that commits T and Y to sell the electricity produced from their shares of the applicable credit property to Utility for a term of 15 years. At the end of the day on December 31st of year 1, the delegation agreements terminate.

(B) *Analysis*. Because T and Y did not delegate authority for a period of more than one year to sell the output from their shares of the applicable credit property, the requirements of paragraph (a)(3)(iii) of this section (as modified by paragraph (a)(4)(iii)(B) of this section) are met. Assuming that TLLC otherwise qualifies as an applicable unincorporated organization, TLLC is an organization described in paragraph (a)(4)(iii)(A) of this section and can make an election under paragraphs (b) and (e) of this section to be excluded from the application of all of subchapter K under section 761(a). As such, T can make an elective payment election for the applicable credits determined with respect to its share of the applicable credit property held by TLLC, assuming the requirements of section 6417 are otherwise met. The analysis in this example would be the same whether Y is also an Indian Tribal government, another applicable entity, or some other person.

(iii) *Example 3*—(A) *Facts*. The facts are the same as in paragraph (a)(5)(ii)(A) of this section (*Example 2*), except that at the end of the day on December 31, T and Y each agree, in writing, to a new agent delegation agreement with Q with substantively identical terms as the agent delegation agreement in effect during year 1.

(B) *Analysis*. Because each of T and Y have agreed, in writing, to engage Q in an agency relationship lasting no longer than one year, the results are the same as in paragraph (a)(5)(ii)(B) of this section (*Example 2*). In contrast, if the agent delegation agreement renewed automatically, T and Y have effectively entered into an agent delegation agreement lasting longer than one year and have violated the requirements of paragraph (a)(4)(iii)(B) of this section. In that case, TLLC would not be eligible to make or maintain an election under section 761(a). As such, T could not make an elective payment election for the applicable credits determined with respect to its share of the applicable credit property held through TLLC.

(b) * * *

(1) *Time for making election for exclusion*. Any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) that wishes to be excluded from all of subchapter K must make the election provided in section 761(a) not later than the time prescribed by §1.6031(a)–1(e) (including extensions thereof) for filing the partnership return for the first tax-

able year for which exclusion from subchapter K is desired. Notwithstanding the prior sentence, such organization may be deemed to have made the election in the manner prescribed in paragraph (b)(2)(ii) of this section.

(2) *Method of making election*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income*, which must contain the information required in this paragraph (b)(2)(i). Such return must be filed with the Internal Revenue Service Center where the partnership return, Form 1065, would be required to be filed if no election were made. To determine the appropriate Internal Revenue Service Center, the principal office or place of business of the person filing the return will be considered the principal office or place of business of the organization. The partnership return must be filed not later than the time prescribed §1.6031(a)–1(e) (including extensions thereof) for filing the partnership return with respect to the first taxable year for which exclusion from subchapter K is desired. Such partnership return must contain, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and taxpayer identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

(ii) *Deemed election rule.* If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. Although the following facts are not exclusive, either one of such facts may indicate the requisite intent:

(A) At the time of the formation of the organization there is an agreement among the members that the organization be excluded from subchapter K beginning with the first taxable year of the organization; or

(B) The members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

(3) * * *

(i) *In general*. An election under this section to be excluded will be effective unless within 90 days after the formation of the organization any member of the organization notifies the Commissioner that the member desires subchapter K to apply to such organization, and also advises the Commissioner that the member has so notified all other members of the organization by registered or certified mail. Such election is irrevocable as long as the organization remains qualified under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), or unless approval of revocation of the election is secured from the Commissioner.

* * * * *

(c) *Partial exclusion from subchapter K*. An unincorporated organization which wishes to be excluded from only certain sections of subchapter K must submit to the Commissioner, no later than 90 days after the beginning of the first taxable year for which partial exclusion is desired, a request for permission to be excluded from certain provisions of subchapter K. The request must set forth the sections of subchapter K from which exclusion is sought and must state that such organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), and that the members of the organization elect to be excluded to the extent indicated. Such exclusion will be effective only upon approval of the election by the Commissioner and subject to the conditions the Commissioner may impose.

* * * * *

(e) *Cross reference*. For requirements with respect to the filing of a return on Form 1065 by a partnership, see §1.6031(a)–1.

(f) *Applicability date*. Except as provided in paragraph (d) of this section, this section applies to taxable years ending on or after March 11, 2024.

Heather C. Maloy,
Acting Deputy Commissioner.

Approved: November 6, 2024.

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

(Filed by the Office of the Federal Register November 19, 2024, 8:45 a.m., and published in the issue of the Federal Register for November 20, 2024, 89 FR 91552)

26 CFR 301.6103(j)(1)-1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical ...

T.D. 10013

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce, including the Bureau of the Census, for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend existing regulations relating to the disclosure of specified return information to the Bureau of the Census (Bureau). The final regulations ensure the efficient and appropriate transfer of return information to the Bureau and permit the disclosure of additional return information pursuant to a request from the Secretary of Commerce. These regulations require no action by taxpayers and have no effect on their tax liabilities.

DATES: *Effective date*: These final regulations are effective on November 26, 2024.

Applicability date: For the date of applicability, *see* §301.6103(j)(1)-1.

FOR FURTHER INFORMATION CONTACT: Elizabeth Erickson of the Office of the Associate Chief Counsel (Procedure and Administration), at (202) 317-6834; (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document amends the Procedure and Administration Regulations, 26 CFR part 301, relating to section 6103(j)(1)(A) of the Internal Revenue Code (Code), by adding final regulations under section 6103 (final regulations). Section 6103(j)(1) provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary), stating that, "[u]pon request in writing by the Secretary of Commerce, the Secretary shall furnish . . . such returns, or return information reflected thereon, to officers and employees of the Bureau of the Census" and "such return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis" "as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law." Section 6103(q) further authorizes the Secretary to "prescribe such other regulations as are necessary to carry out the provisions of" section 6103. The final regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

Background

There is a long history of providing return information to the Bureau under section 6103(j)(1)(A), and the regulations promulgated under this section have been amended periodically to increase the amount of return information provided to facilitate the statistical activities of the Bureau. *See e.g.*, TD 9037, 68 FR 2693, January 21, 2003; TD 9188, 70 FR 12141, March 11, 2005; TD 9267, 71 FR 38263, July 6, 2006; TD 9372, 72 FR 73262, December 27, 2007; TD 9439, 73 FR 79361, December 29, 2008; TD 9500, 75 FR 52459, August 26, 2010; TD 9631, 78 FR 52857, August 27, 2013; TD 9754, 81 FR 9767, February 26, 2016; TD 9856, 84 FR 14011, April 9, 2019.

The existing regulations under section 6103(j)(1)(A) are set forth in 26 CFR 301.6103(j)(1)-1. They authorize the Bureau to receive return information that supports many different Bureau projects and programs, including the Economic Census, the Longitudinal Employer-Household Dynamics program, and the Small Area Income and Poverty Estimates program, among others.

Pursuant to section 6103(p)(4), the IRS sets stringent privacy and security requirements for agencies receiving return information, including the Bureau. These requirements are currently detailed in IRS Publication 1075, *Tax Information Security Guidelines For Federal, State and Local Agencies. See also* §301.6103(p)(4)-1.

By letter dated February 29, 2024, the Secretary of Commerce requested the Secretary amend existing §301.6103(j)(1)-1 to provide for the disclosure of additional items of return information to the Bureau to enable the Bureau to perform mission critical statistical functions. The Secretary of Commerce further stated that the additional items would allow the Bureau to conduct its economic, demographic, decennial, and research statistics programs, censuses, and related program evaluations. The amendments to the existing regulations would permit the Bureau to publish statistical information, enhance the use of administrative records, improve the quality of program estimates, and support the reduction of burden. The Secretary of Commerce's letter lists the additional items of return information requested based on the Bureau's specific need for each item of information.

On March 29, 2024, a notice of proposed rulemaking (REG-123376-22) was published in the ***Federal Register*** (89 FR 22101) (proposed regulations). The proposed regulations proposed amending the regulations that authorize disclosure of specified return information to the Bureau. The proposed regulations would allow the disclosure of additional items of return information requested by the Secretary of Commerce to enable the Bureau to perform mission critical statistical functions. The proposed regulations would also permit the disclosure of return information if an item of return information currently listed in the regulations is subsequently reported in a substantially similar format or on a substantially similar document.

The proposed regulations would formalize existing practice to include (1) the

requirement that all projects that use return information disclosed under these regulations be approved by the IRS Director of Statistics of Income, and (2) language related to the IRS's and the Bureau's disclosure review obligations.

Summary of Comments and Explanation of Revisions

The Department of the Treasury (Treasury Department) and the IRS received eighteen comments in response to the proposed regulations. The comments are available for public inspection at *https://www.regulations.gov* or upon request. There was no request for a public hearing, and none was held. After full consideration of the comments received, which are described in this Summary of Comments and Explanation of Revisions, these final regulations adopt the proposed regulations with minor changes.

A. *Comments Supporting the Proposed Regulations*.

Nine of the comments received did not seek to modify the items of return information permitted to be disclosed to the Bureau pursuant to the proposed regulations. Of these comments, six were supportive of the proposed regulations. One comment noted the importance of administrative tax data in measuring and understanding income and wealth in the United States. Another comment noted that the proposed regulations would improve the Bureau's ability to accurately estimate household income and otherwise evaluate and improve the Bureau's statistical products. This same comment also encouraged the IRS and the Bureau, along with the Office of Management and Budget and other statistical agencies, to explore additional pathways for increasing the statistical agencies' access to Federal tax data, as well as a greater sharing of administrative data across statistical agencies, noting that increased use of administrative data has significant promise for improving statistics on U.S. households and businesses. Finally, this comment noted its support for further consideration of possible means of expanding access to tax data for appropriate purposes in a reliably secure and confidential way.

Another comment supported the proposed regulations and stated that the data that could be disclosed as outlined in the proposed regulations was crucial for the IRS's efforts to advance equity. As one example, this comment noted that, if finalized, the proposed regulations would provide an important opportunity for government and independent researchers to understand demographic trends regarding the Child Tax Credit (CTC) and other refundable credits, as well as to identify and track potential disparities in tax administration. Another comment noted that the proposed changes to the existing regulations would enable the Bureau to produce data that provides more detail about the economic conditions of various populations across the United States, including populations that have been historically underserved, marginalized, and adversely affected by health inequity.

These comments reflect support for the proposed regulations' items of return information permitted to be disclosed to the Bureau. The Treasury Department and IRS agree that disclosure of this information will further the needs of the Bureau by authorizing the Bureau to receive return information that supports many different Bureau projects and programs, including the Economic Census, the Longitudinal Employer-Household Dynamics program, and the Small Area Income and Poverty Estimates program, among others.

B. *Comments Proposing that Additional Items of Return Information be Disclosed to the Bureau*.

Two comments suggested that additional information on the variety of energy credits under the Inflation Reduction Act of 2022 (IRA) be furnished to the Bureau. The IRA, Public Law 117-169, 136 Stat. 1818 (August 16, 2022), featured a significant number of new tax provisions related to clean energy. Section 6103(j)(1)(A) provides that the Secretary "shall furnish" returns or return information requested by the Secretary of Commerce "for the purpose of, but only to the extent necessary in, the structuring of the censuses and national economic accounts and conducting related statistical activities authorized by law." In her request to the Secretary, the Secretary of Commerce did not request the furnishing of the return information recommended by the comments. Because the Secretary of Commerce did not request that information, the final regulations do not adopt these comments.

Similarly, two other comments recommended that additional data regarding partnership returns be furnished to the Bureau – specifically, the zip code of partners included on Form 1065, *U.S. Return of Partnership Income*, Schedule K-1. The Secretary of Commerce in her request to the Secretary did not request the return information recommended by the comments. Accordingly, the final regulations do not adopt these comments.

One comment suggested that it is important for the Bureau to have access to the series of Forms 1099 for both filers and non-filers because such information is important for measuring and understanding income and its distribution, and that the accuracy of income estimates would improve. The comment in particular identified Forms 1099-INT, *Interest Income*, and 1099-DIV, *Dividends and Distributions*, along with certain data from Form 1098-T, *Tuition Statement* (identifiers of the college attended, and tuition amount). The Secretary of Commerce in her request to the Secretary did not request the disclosure of the Form 1099 series in general or the Forms 1099-INT or 1099-DIV specifically. The proposed regulations would permit the disclosure of payments received for qualified tuition and related expenses as well as the identity of the eligible educational institution filing Form 1098-T. Accordingly, no change to the final regulations is necessary to adopt these comments.

Two other comments requested that payer and payee taxpayer identification numbers (TINs) from information returns be disclosed to the Bureau. Payer and payee TINs may already be disclosed to the Bureau under the existing regulations. *See* §§301.6103(j)(1)-1(b)(1) (relating to individual taxpayers); 301.6103(j)(1)-1(b)(2)(i) (relating to taxpayers engaged in a trade or business); 301.6103(j)(1)-1(b)(3) (relating to business-related return information); and 301.6103(j)(1)-1(b)(4) (relating to tax-exempt organizations). The proposed regulations similarly provide for the ability to disclose payer and payee TINs. *See* proposed §§301.6103(j)

(1)-1(b)(1)(i)(A) (relating to individual taxpayers); 301.6103(j)(1)-1(b)(1)(ii) (relating to returns filed on behalf of a trade or business); 301.6103(j)(1)-1(b)(1)(iii) (relating to tax-exempt organizations). Accordingly, no change to the final regulations is necessary to adopt these comments.

A comment supported the language in the proposed regulations that would provide the Bureau with information on health coverage (such as marketplace coverage parameters, and employer coverage on Forms 1095-A, *Health Insurance Marketplace Statement*, 1095-B, *Health Coverage*, and 1095-C, *Employer-Provided Health Insurance Offer and Coverage*) noting that the information reported on these forms provides a comprehensive record of health coverage nationwide and fills important gaps in data. The comment also noted that information regarding health savings accounts (HSAs) from Form 5498-SA, *HSA, Archer MSA, or Medicare Advantage MSA Information*, would also be valuable to policymakers, as the policy considerations with respect to HSAs are a frequent and important focus of ongoing research. The Treasury Department and the IRS note that certain data from Form 5498-SA are already included in the information that would be permitted to be disclosed to the Bureau under the proposed regulations. The final regulations in this regard adopt the proposed regulations without modification.

This same comment requested that the Bureau release (a) enhanced Annual Social and Economic Supplement (ASEC) of the Current Population Survey (CPS) data with new IRS data matched to it, and (b) detailed cross tabulations of newly released tax data by income, geographic area, filing type, and other available tax return statistics. In addition, this comment also encouraged the IRS to continue to carefully evaluate technical and policy solutions for safely sharing the various blended data and implement data governance principles such as accessibility and transparency, through the blending of IRS and Bureau data.

This same comment suggested that various data elements should be disclosed to the Bureau to allow the Bureau to have a more accurate understanding of the impact of current tax benefits and the potential impact of modifications to these provisions. The suggested data elements included: tax-filing status, income from various sources, the number of earned income tax credit (EITC) eligible qualifying children, the amount of tax credits like EITC and the CTC that families receive, and tax liabilities. Each of these data elements may be disclosed either directly or indirectly under the existing regulations and also under the proposed regulations. *See* proposed §§301.6103(j)(1)-1(b)(1)(i) (reflecting returns and return information related to individual taxpayers); 301.6103(j)(1)-1(b)(1)(i)(B) (regarding tax-filing status); 301.6103(j)(1)-1(b)(1)(i)(O) (regarding earned income as defined under section 32(c)(2)); 301.6103(j)(1)-1(b)(1)(i)(GG) (regarding the EITC); 301.6103(j)(1)-1(b)(1)(i)(P) (regarding EITC-eligible qualifying children); 301.6103(j)(1)-1(b)(1)(i)(PP) (regarding the CTC). The overall tax liability of an individual taxpayer, which the Treasury Department and IRS interpret to mean the total amount of tax due or paid by an individual taxpayer, may be ascertained through the items of income, gain, deduction, and credit, that may similarly be disclosed under the proposed and final regulations. Accordingly, the final regulations adopt the proposed regulations in this respect without modification.

C. *Comments Expressing Concerns Regarding Data Security*.

One comment suggested that in its finalized form, the proposed regulations should state affirmatively that, in addition to IRS data privacy protections, data are and will remain confidential under 13 U.S.C. 9, whether in their original form or when comingled or linked.

The final regulations do not adopt this recommendation. The provision cited in the comment, 13 U.S.C. 9, governs the protection and use of confidential data by the Department of Commerce. Section 214 of title 13, United States Code governs criminal penalties against employees or staff members of the Bureau for prohibited disclosure of such confidential data. The disclosures that would be permitted by the proposed regulations concern disclosures made by the IRS under section 6103(j) of Title 26, United States Code (Title 26). The proposed regulations, as well as these final regulations, do not govern data privacy or confidentiality requirements outside of Title 26. The Secretary of Commerce affirmed the application of 13 U.S.C. 9 and 214 in her February 29, 2024, request to the Secretary.

Two other comments expressed concerns that the data sharing contemplated by the proposed regulations would weaken the confidentiality of personal tax data held by the IRS, encourage the inappropriate release of personal tax information, and increase the vulnerability of individual tax return information to data breaches, intrusion, data theft, and abuse.

The Treasury Department and the IRS take taxpayer confidentiality seriously. Section 6103(a) prohibits the unauthorized disclosure of tax returns and return information by officers or employees of the United States, which includes officers or employees of the Treasury Department, the IRS, the Department of Commerce, and the Bureau. Unauthorized disclosure of returns and return information, if willful, is a felony. *See* section 7213 of the Code. Unauthorized disclosure may also be punishable through civil damages. *See* section 7431 of the Code. Pursuant to section 6103(p)(4), the IRS sets stringent privacy and security requirements for agencies receiving return information, including the Bureau. *See* §301.6103(p)(4)-1. Proposed §301.6103(j)(1)-1(d) did not propose to modify the requirements set forth in section 6103(p)(4) and, instead, noted their applicability, stating that if the IRS determines that the Bureau fails to satisfy those requirements, the IRS may take action to ensure that the requirements are satisfied, "including suspension of disclosures of return information" until the IRS determines that the requirements of section 6103(p)(4) have been, or will be, satisfied.

No comments were received regarding proposed §301.6103(j)(1)-1(d), and accordingly, the final regulations adopt the proposed regulation in this respect without modification. The regulation ensures that disclosures of returns and return information are made consistent with the requirements set forth in the Code and regulations, and that the IRS may suspend any disclosures to the Bureau should

either entity fail to satisfy the requirements under section 6103(p)(4).

D. *Comments Expressing Concerns about the Impacts of the Use of Data for Certain Classes of Taxpayers.*

One comment requesting that the proposed regulations be withdrawn expressed concerns that sharing additional tax data with the Bureau would result in unintended adverse consequences for immigrant communities. Specifically, the comment noted that additional data sharing could result in a "chilling effect" for immigrant taxpayers, suggesting that individuals may not file tax returns because they are concerned that their tax return data will be shared with immigration enforcement agencies. The comment also expressed a concern that the proposed regulations could result in the creation of a list of taxpayers who file returns using Individual Taxpayer Identification Numbers that could be used to target individuals presumed to be undocumented for immigration enforcement purposes. The comment noted that the IRS should continue to assure taxpayers that their data is secure and that they can safely file their taxes without being concerned that their information will be used for reasons beyond tax administration.

As discussed previously in this Summary of Comments and Explanation of Revisions, return information that a taxpayer provides to the IRS may not be disclosed unless otherwise permitted by Title 26, and unauthorized disclosures of returns or return information may be subject to criminal and civil penalties. There is no provision in the United States Code that authorizes the disclosure or redisclosure of returns or return information for enforcement of immigration laws. Comments regarding other possible lawful disclosures of taxpayer information are outside the scope of these regulations because the proposed regulations relate to the disclosure of specified return information to the Bureau, as permitted by law, and not to any other agency, such as U.S. Immigration and Customs Enforcement or the U.S. Department of Homeland Security.

Another comment requested that the proposed regulations be withdrawn because sharing such personal and entity tax data encourages a racial and/or gender diversity impact analysis of tax policy decisions. The comment further stated that such a racial or gender diversity impact analysis is inappropriate where no discriminatory intent has been demonstrated and where tax provisions have been introduced by Congress based on independent considerations of tax policy without any design or purpose to create disproportionate racial or gender impact. The Treasury Department and the IRS do not adopt this comment. As previously described in this preamble, section 6103(j) states that the Secretary "shall furnish" returns and return information, upon the request of the Secretary of Commerce, to the Bureau "for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law." These regulations provide for disclosure to the Bureau that is fully consistent with that statutory mandate.

E. *Modification to Clarify "Taxpayer Identity Information".*

No comments were received regarding the definition of *taxpayer identity information*. Proposed §301.6103(j)(1)-1(b)(1)(i)(A) is the first instance of where that term is used and includes the parenthetical "(as defined under section 6103(b)(6) of the Code)." Other references to taxpayer identity information in the proposed regulations lack that parenthetical descriptor. To provide consistency, the final regulations modify the proposed regulations to include that descriptor. *See* §§301.6103(j)(1)-1(b)(1)(ii)(A) (regarding taxpayer identity information of taxpayers engaged in a trade or business); 301.6103(j)(1)-1(b)(1)(ii)(P) (regarding taxpayer identity information of a parent corporation, shareholder, partner, and employer identity information); 301.6103(j)(1)-1(b)(1)(iii)(A) (regarding taxpayer identity information of a tax-exempt organization); 301.6103(j)(1)-1(b)(3)(i)(A)(*1*) (regarding taxpayer identity information reflected on returns of corporations); 301.6103(j)(1)-1(b)(3)(i)(B)(*2*) (regarding taxpayer identity information from Form SS-4, *Application for Employer Identification Number*).

Special Analyses

I. *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.

II. *Regulatory Flexibility Act*

Because these regulations would not impose any requirements on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for the Office of Advocacy of the Small Business Administration did not provide any written comments.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2024, that threshold was $200 million. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (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 regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is Elizabeth Erickson of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS also participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301–PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by revising the entry for §301.6103(j)(1)-1 and removing the entry for §301.6103(j)(1)-1T to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6103(j)(1)-1 also issued under 26 U.S.C. 6103(j)(1) and 6103(q).

* * * * *

Par 2. Section 301.6103(j)(1)-1 is amended by adding a sentence to the end of paragraph (a) and revising paragraphs (b), (d), and (e) to read as follows:

§301.6103(j)(1)-1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

(a) * * * To the extent a particular form, schedule, or other document filed with the Internal Revenue Service is referenced in this section, such information shall continue to be disclosable pursuant to this section even if subsequently reported in a substantially similar format or on a substantially similar document filed with the Internal Revenue Service.

(b) *Disclosure of return information reflected on returns to officers and employees of the Bureau of the Census*. (1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

(i) With respect to returns filed by individual taxpayers:

(A) Taxpayer identity information (as defined in section 6103(b)(6) of the Internal Revenue Code (Code)), validity code with respect to the taxpayer identifying number (as described in section 6109 of the Code), and taxpayer identity information of spouse and dependents, if reported.

(B) Filing status.

(C) Number and classification of reported exemptions.

(D) Wage and salary income.

(E) Dividend income.

(F) Interest income.

(G) Gross rent and royalty income.

(H) Total of—

(*1*) Wages, salaries, tips, etc.;

(*2*) Interest income;

(*3*) Dividend income;

(*4*) Alimony received;

(*5*) Business income;

(*6*) Pensions and annuities;

(*7*) Income from rents, royalties, partnerships, estates, trusts, etc.;

(*8*) Farm income;

(*9*) Unemployment compensation; and

(*10*) Total Social Security benefits.

(I) Adjusted gross income.

(J) Type of tax return filed.

(K) Entity code.

(L) Code indicators for Form 1040, Form 1040 (Schedules A, C, D, E, F, and SE), and Form 8814.

(M) Posting cycle date relative to filing.

(N) Social Security benefits.

(O) Earned income (as defined in section 32(c)(2) of the Code).

(P) Number of Earned income credit-eligible qualifying children.

(Q) Electronic filing system indicator.

(R) Return processing indicator.

(S) Paid preparer code.

(T) Dependent Social Security numbers.

(U) Total income.

(V) Ordinary dividends.

(W) Taxable refunds, credits, or offsets of State and local income taxes.

(X) Business income or (loss).

(Y) Capital gain or (loss).

(Z) Other gains or (losses).

(AA) Individual Retirement Arrangement (IRA) distributions.

(BB) Taxable amount of IRA distributions.

(CC) Pensions and annuities.

(DD) Taxable amount of pensions and annuities.

(EE) Rental real estate, royalties, partnerships, S corporations, trusts, etc.

(FF) Farm income or (loss).

(GG) Earned income credit.

(HH) Taxable amount of Social Security benefits.

(II) Other income.

(JJ) Itemized deductions.

(KK) Taxable income.

(LL) Tax.

(MM) Credit for child and dependent care expenses.

(NN) Education credits.

(OO) Retirement savings contributions credit.

(PP) Child tax credit.

(QQ) Nontaxable combat pay election.

(RR) Additional Child Tax Credit.

(SS) American Opportunity Tax Credit.

(TT) Medical and dental expenses.

(UU) State and local income taxes.

(VV) State and local general sales taxes.

(WW) State and local personal property taxes.

(XX) State and local real estate taxes.

(YY) Other taxes (amount).

(ZZ) Home mortgage interest and points.

(AAA) Mortgage interest not on a Form 1098.

(BBB) Points not on a Form 1098.

(CCC) Investment interest.

(DDD) Total gifts to charity, including carryover from prior year.

(EEE) Casualty and theft losses.

(FFF) Total itemized deductions.

(GGG) Ordinary dividends.

(HHH) Qualified dividends.

(III) Tax-exempt interest.

(JJJ) Unemployment compensation.

(KKK) From Form 1098–

(*1*) Borrower taxpayer identification number;

(*2*) Mortgage interest;

(*3*) Outstanding mortgage principal;

(*4*) Refund of overpaid interest;

(*5*) Mortgage insurance premiums;

(*6*) Points paid on purchase of principal residence;

(*7*) Payee/payer/employee taxpayer identification number;

(*8*) Payee/payer/employee name (first, middle, last, suffix);

(*9*) Street address;

(*10*) City;

(*11*) State;

(*12*) Zip code (9 digit);

(*13*) Posting cycle week;

(*14*) Posting cycle year; and

(*15*) Document code.

(LLL) From Form 1098-E—Student loan interest.

(MMM) From Form 1098-T–

(*1*) Payments received for qualified tuition and related expenses;

(*2*) Scholarships or grants;

(*3*) Check box indicating that the amount in box 1 or 2 includes amounts for an academic period beginning in the following year;

(*4*) Check box indicating that student is at least a half-time student; and

(*5*) Check box indicating that student is a graduate student.

(NNN) From Form 5498–

(*1*) IRA contributions (other than amounts in certain boxes);

(*2*) Rollover contributions;

(*3*) Roth IRA conversion amount;

(*4*) Fair market value of account;

(*5*) Checkboxes: IRA, Simplified Employee Pension (SEP), Savings Incentive Match Plan for Employees of Small Employers (SIMPLE), Roth IRA;

(*6*) SEP contributions; and

(*7*) SIMPLE contributions.

(OOO) From Form SSA-1099/RRB-1099–

(*1*) Net benefits;

(*2*) Address; and

(*3*) Trust fund description.

(PPP) From Form 1099-G—Unemployment compensation.

(QQQ) From Form 1099-K–

(*1*) Filer name;

(*2*) Filer address;

(*3*) Filer taxpayer identification number;

(*4*) Payee taxpayer identification number;

(*5*) Payee name;

(*6*) Payee address;

(*7*) Gross payments;

(*8*) Card not present transactions;

(*9*) Merchant category code;

(*10*) Number of payment transactions; and

(*11*) Payments by month.

(RRR) From Form 1099-MISC—Nonemployee compensation.

(SSS) From Form 1099-NEC—Nonemployee compensation.

(TTT) From Form 1099-Q–

(*1*) Gross distribution; and

(*2*) Plan type checkboxes.

(UUU) From Form 1099-R/RRB-1099-R—

(*1*) Gross distribution;

(*2*) Distribution code(s); and

(*3*) Plan type checkboxes.

(VVV) From Form W-2–

(*1*) Employee's Social Security number;

(*2*) Employer identification number;

(*3*) Employer's name, address, and Zip code;

(*4*) Employee's name and address;

(*5*) Social Security tips;

(*6*) Medicare wages and tips;

(*7*) Box 12 codes and values; and

(*8*) Statutory employee, retirement plan, and third-party sick pay checkboxes.

(WWW) From Form 1040, Schedule D–

(*1*) Net short-term capital gain/loss; and

(*2*) Net long-term capital gain/loss.

(XXX) From Form 1040, Schedule E–

(*1*) Total rental real estate and royalty income or (loss); and

(*2*) Total estate and trust income or (loss).

(YYY) From Form 1040, Schedule F–

(*1*) Gross income;

(*2*) Total expenses;

(*3*) Net farm profit (or loss); and

(*4*) Gross income (accrual).

(ii) With respect to taxpayers filing a return on behalf of a trade or business—

(A) The taxpayer name directory and entity records consisting of taxpayer identity information (as defined in section 6103(b)(6) of the Code) with respect to taxpayers engaged in a trade or business.

(B) The principal industrial activity code.

(C) The filing requirement code.

(D) The employment code.

(E) The physical location.

(F) Monthly corrections of, and additions to, the information described in paragraphs (b)(1)(ii)(A) through (E) of this section.

(G) From Form SS–4, all information reflected on such form.

(H) From an employment tax return—

(*1*) Taxpayer identifying number of the employer;

(*2*) Total compensation reported;

(*3*) Master file tax account code (MFT);

(*4*) Taxable period covered by such return;

(*5*) Employer code;

(*6*) Document locator number;

(*7*) Record code;

(*8*) Total number of individuals employed in the taxable period covered by the return;

(*9*) Total taxable wages paid for purposes of chapter 21 of the Code;

(*10*) Total taxable tip income reported for purposes of chapter 21 of the Code;

(*11*) If a business has closed or stopped paying wages;

(*12*) Final date a business paid wages; and

(*13*) If a business is a seasonal employer and does not have to file a return for every quarter of the year.

(I) From Form 1040, Schedule C—

(*1*) Purchases less cost of items withdrawn for personal use;

(*2*) Materials and supplies;

(*3*) Gross income;

(*4*) Total expenses; and

(*5*) Net profit or loss.

(J) From Form 1040 (Schedule SE)—

(*1*) Taxpayer identifying number of self-employed individual;

(*2*) Business activities subject to the tax imposed by chapter 21 of the Code;

(*3*) Net earnings from farming;

(*4*) Net earnings from nonfarming activities;

(*5*) Total net earnings from self-employment;

(*6*) Taxable self-employment income for purposes of chapter 2 of the Code;

(*7*) Net profit and loss; and

(*8*) Church employee income.

(K) Total Social Security taxable earnings.

(L) Quarters of Social Security coverage.

(M) From Form 940–

(*1*) State of state unemployment tax; and

(*2*) Total payments to all employees.

(N) From Form 941–

(*1*) Number of employees who received wages, tips, or other compensation for the pay period including: March 12 (Quarter 1), June 12 (Quarter 2), September 12 (Quarter 3), or December 12 (Quarter 4); and

(*2*) Wages, tips, and other compensation.

(O) From Form 943–

(*1*) Agricultural employees; and

(*2*) Total wages subject to Social Security tax.

(P) Taxpayer identity information (as defined in section 6103(b)(6) of the Code) including parent corporation, shareholder, partner, and employer identity information.

(Q) Gross income, profits, or receipts.

(R) Returns and allowances.

(S) Cost of labor, salaries, and wages.

(T) Total expenses or deductions, including totals of the following components thereof:

(*1*) Repairs (and maintenance) expense;

(*2*) Rents (or lease) expense;

(*3*) Taxes and licenses expense;

(*4*) Interest expense, including mortgage or other interest;

(*5*) Depreciation expense;

(*6*) Depletion expense;

(*7*) Advertising expense;

(*8*) Pension and profit-sharing plans (retirement plans) expense;

(*9*) Employee benefit programs expense;

(*10*) Utilities expense;

(*11*) Supplies expense;

(*12*) Contract labor expense; and

(*13*) Management (and investment advisory) fees.

(U) Total assets.

(V) Beginning- and end-of-year inventory.

(W) Royalty income.

(X) Interest income, including portfolio interest.

(Y) Rental income, including gross rents.

(Z) Tax-exempt interest income.

(AA) Net gain from sales of business property.

(BB) Other income.

(CC) Total income.

(DD) Percentage of stock owned by each shareholder.

(EE) Percentage of capital ownership of each partner.

(FF) Principal industrial activity code, including the business description.

(GG) Consolidated return indicator.

(HH) Wages, tips, and other compensation.

(II) Social Security wages.

(JJ) Deferred wages.

(KK) Social Security tip income.

(LL) Total Social Security taxable earnings.

(MM) From Form 1099-R— Gross distributions from employer-sponsored and individual retirement plans.

(NN) From Form 3921–

(*1*) Date option granted;

(*2*) Date option exercised;

(*3*) Exercise price paid per share;

(*4*) Fair market value per share on exercise date; and

(*5*) Number of shares transferred.

(OO) From Form 6765 (when filed with corporation income tax returns)—

(*1*) Indicator that total qualified research expenses is greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; or, greater than or equal to $3 million;

(*2*) Cycle posted; and

(*3*) Research tax credit amount to be carried over to a business return, schedule, or form.

(PP) Total number of documents reported on Form 1096 transmitting Forms 1099–MISC.

(QQ) Total amount reported on Form 1096 transmitting Forms 1099–MISC.

(RR) From Form 1125–A, purchases.

(SS) From Form 1041–

(*1*) Interest income;

(*2*) Total ordinary dividends;

(*3*) Total income;

(*4*) Charitable deduction; and

(*5*) Taxable income.

(TT) From Form 1041, Schedule K-1–

(*1*) Beneficiary identifying number;

(*2*) Beneficiary name;

(*3*) Interest income;

(*4*) Total ordinary dividends;

(*5*) Net short-term capital gain;

(*6*) Net long-term capital gain;

(*7*) Other portfolio and non-business income;

(*8*) Ordinary business income;

(*9*) Net rental and real estate income; and

(*10*) Other rental income.

(UU) From Form 1120–

(*1*) Cost of goods sold;

(*2*) Compensation of officers; and

(*3*) Salaries and wages (less employment credits).

(VV) From Form 1120-REIT–

(*1*) Compensation of officers;

(*2*) Salaries and wages (less employment credits);

(*3*) Total assets;

(*4*) Principal Business Activity (PBA) code; and

(*5*) Type of real estate investment trust (REIT).

(WW) From Form 1120-S–

(*1*) Cost of goods sold; and

(*2*) Salaries and wages (less employment credits).

(XX) From Form 1120-S, Schedule K–1–

(*1*) Ordinary business income (loss);

(*2*) Net rental real estate income;

(*3*) Other net rental income;

(*4*) Interest income;

(*5*) Total ordinary dividends;

(*6*) Royalties;

(*7*) Net short-term capital gain;

(*8*) Net long-term capital gain;

(*9*) Other income (loss); and

(*10*) Current year allocation percentage.

(YY) From Form 1065–

(*1*) Gross receipts or sales less returns and allowances;

(*2*) Cost of goods sold; and

(*3*) Ordinary dividends.

(ZZ) From Form 1065, Schedule K–1—

(*1*) Publicly-traded partnership indicator;

(*2*) Partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities;

(*3*) Ordinary business income;

(*4*) Net rental real estate income;

(*5*) Other net rental income;

(*6*) Total guaranteed payments;

(*7*) Interest income;

(*8*) Total ordinary dividends;

(*9*) Dividend equivalents;

(*10*) Royalties;

(*11*) Net short-term capital gain;

(*12*) Net long-term capital gain; and

(*13*) Other income.

(AAA) From Form 3800 Part II (Current Year General Business Credit from Form 6765).

(BBB) From Form 3800, Part III, Increasing research activities (Form 6765).

(CCC) Dividends, including ordinary or qualified.

(iii) With respect to returns filed on behalf of a tax-exempt organization–

(A) Taxpayer identity information (as defined in section 6103(b)(6) of the Code).

(B) Activity codes.

(C) Filing requirement code.

(D) Monthly corrections of, and additions to, the information described in paragraphs (b)(1)(iii)(A) through (C) of this section.

(E) From Form 990, Salaries, other compensation, employee benefits.

(F) From Form 990-PF–

(*1*) Compensation of officers, directors, trustees, etc.; and

(*2*) Pension plans, employee benefits.

(G) From Form 990-EZ, Salaries, other compensation, employee benefits.

(iv) With respect to taxpayers filing information returns relating to health insurance:

(A) From Form 1095-A–

(*1*) Marketplace information;

(*2*) Policy issuer's name;

(*3*) Recipient's name;

(*4*) Recipient's Social Security number;

(*5*) Recipient's spouse's name;

(*6*) Recipient's spouse's Social Security number;

(*7*) Policy start date;

(*8*) Policy termination date;

(*9*) Covered individual Social Security number;

(*10*) Coverage start date;

(*11*) Coverage termination date;

(*12*) Monthly enrollment premium;

(*13*) Monthly second lowest cost silver plan premium;

(*14*) Monthly advance payment of premium tax credit;

(*15*) Annual premium;

(*16*) Annual second lowest cost silver plan premium; and

(*17*) Annual advance payment of premium tax credit.

(B) From Form 1095-B–

(*1*) Name;

(*2*) Social Security number;

(*3*) Date of birth;

(*4*) Origin of health coverage;

(*5*) Employer name;

(*6*) Employer identification number of issuer or other coverage provider;

(*7*) Employer address;

(*8*) Employer identification number;

(*9*) Name control validation;

(*10*) Social Security number of covered individuals;

(*11*) Date of birth of covered individuals; and

(*12*) Coverage by month of covered individuals.

(C) From Form 1095-C–

(*1*) Name of employee;

(*2*) Social Security number or other taxpayer identification number of employee;

(*3*) Address of employee;

(*4*) Name of employer;

(*5*) Employer identification number;

(*6*) Employer address;

(*7*) Offer of coverage code;

(*8*) Checkbox for employer provided self-insured coverage;

(*9*) Employee required contribution, all 12 months;

(*10*) Name control validation;

(*11*) Social Security number or other taxpayer identification number of covered individuals; and

(*12*) Coverage by month of covered individuals.

(v) With respect to taxpayers filing information returns related to health savings accounts, from Form 5498-SA–

(A) Taxpayer identification number;

(B) Total contributions;

(C) Fair market value of accounts; and

(D) Account type checkboxes.

(2) Subject to the requirements of paragraph (d) of this section and §301.6103(p)(2)(B)-1, officers or employees of the Social Security Administration to whom the following return information reflected on returns has been disclosed as provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of the Census for necessary purposes described in paragraph (b)(1) of this section:

(i) From Form SS-4, all information reflected on such form.

(ii) From Form 1040 (Schedule SE)—

(A) Taxpayer identifying number of self-employed individual;

(B) Business activities subject to the tax imposed by chapter 21 of the Code;

(C) Net earnings from farming;

(D) Net earnings from nonfarming activities;

(E) Total net earnings from self-employment; and

(F) Taxable self-employment income for purposes of chapter 2 of the Code.

(iii) From Form W-2, and related forms and schedules—

(A) Social Security number;

(B) Employer identification number;

(C) Wages, tips, and other compensation;

(D) Social Security wages; and

(E) Deferred wages.

(iv) Total Social Security taxable earnings.

(v) Quarters of Social Security coverage.

(3)(i) Officers or employees of the Internal Revenue Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on returns of corporations with respect to the tax imposed by chapter 1 of the Code to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report:

(A) From the business master files of the Internal Revenue Service—

(*1*) Taxpayer identity information (as defined in section 6103(b)(6) of the Code), including parent corporation identity information;

(*2*) Document code;

(*3*) Consolidated return and final return indicators;

(*4*) Principal industrial activity code;

(*5*) Partial year indicator;

(*6*) Annual accounting period;

(*7*) Gross receipts less returns and allowances; and

(*8*) Total assets.

(B) From Form SS–4—

(*1*) Month and year in which such form was executed;

(*2*) Taxpayer identity information (as defined in section 6103(b)(6) of the Code); and

(*3*) Principal industrial activity, geographic, firm size, and reason for application codes.

(C) From Form 1120–REIT—

(*1*) Type of REIT; and

(*2*) Gross rents from real property.

(D) From Form 1120F, corporation's method of accounting.

(E) From Form 1096, total amount reported.

(ii) Subject to the requirements of paragraph (d) of this section and §301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom return information reflected on returns of corporations described in paragraph (b)(3)(i)(B) of this section has been disclosed as provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of the Census for a purpose described in paragraph (b)(3)(i) of this section.

(iii) Return information reflected on employment tax returns disclosed pursuant to paragraph (b)(1)(ii)(H)(*1*), (*2*), (*4*), (*9*), or (*10*) of this section may be used by officers and employees of the Bureau of the Census for the purpose described in and subject to the limitations of paragraph (b)(3)(i) of this section.

* * * * *

(d) *Procedures and restrictions*. (1) Disclosure of return information reflected on returns by officers or employees of the Internal Revenue Service or the Social Security Administration as provided by paragraphs (b) and (c) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Secretary of Commerce describing—

(i) The particular return information reflected on returns to be disclosed;

(ii) The taxable period or date to which such return information reflected on returns relates; and

(iii) The particular purpose for which the return information reflected on returns is to be used, and designating by name and title the officers and employees of the Bureau of the Census or the Bureau of Economic Analysis to whom such disclosure is authorized.

(2) No officer or employee of the Bureau of the Census or the Bureau of Economic Analysis to whom return information reflected on returns is disclosed pursuant to the provisions of paragraph (b) or (c) of this section may disclose such information to any person, other than, pursuant to section 6103(e)(1), the taxpayer to whom such return information reflected on returns relates or other officers or employees of such bureau whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) or (c) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the Internal Revenue Service determines that the Bureau of the Census or the Bureau of Economic Analysis, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Code or regulations in this part or published procedures (*see* §601.601(d)(2) of this chapter), the Internal Revenue Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information reflected on returns otherwise authorized by section 6103(j)(1) and paragraph (b) or (c) of this section, until the Internal Revenue Service determines that such requirements have been or will be satisfied.

(3) All projects using returns or return information disclosed to the Bureau of Census under this section must be approved by the Internal Revenue Service Director of Statistics of Income, the Director's successor, or the Director's delegate, prior to the release of such information.

(4) In its sole discretion, the Internal Revenue Service may authorize the use of the Bureau of Census's disclosure review processes prior to any public disclosure by the Bureau of Census of a project using information provided pursuant to this section. Any Bureau of Census disclosure review process authorized under this paragraph (d)(4) must ensure that all releases meet or exceed all requirements set by the Internal Revenue Service for protecting the confidentiality of returns and return information. Additionally, in its sole discretion, the Internal Revenue Service Statistics of Income Disclosure Review Board may review a Bureau of Census project using information provided pursuant to this section prior to disclosure of that project to the public to ensure that any proposed releases meet or exceed all requirements set by the Internal Revenue Service for protecting the confidentiality of returns and return information. This review requirement may be imposed at any stage of the project.

(e) *Applicability date*. This section applies to disclosures of return information made on or after November 26, 2024.

Heather C. Maloy,
Acting Deputy Commissioner.

Approved: November 6, 2024.

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

(Filed by the Office of the Federal Register (TBD), and published in the issue of the Federal Register for TBD, TBD FR TBD)

Part III

Extension of Transition Process for Claiming the Statutory Exceptions to the Elective Payment Phaseouts

Notice 2024-84

SECTION 1. PURPOSE

This notice extends the transition process for claiming a statutory exception to the elective payment phaseouts contained in section 5 of Notice 2024-9, 2024-2 I.R.B. 358. Thus, if an Applicable Entity provides an attestation described in section 5.02 of Notice 2024-9 with respect to an Applicable Credit Property the construction of which begins before the later of January 1, 2027, or the issuance of further guidance, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will treat the attestation as establishing that a Domestic Content Exception is met with respect to such Applicable Credit Property.

The Treasury Department and the IRS intend to propose regulations addressing the process by which the Secretary of the Treasury or her delegate (Secretary) will implement the statutorily-required exceptions to the phaseouts under §§ 45Y(g)(12) and 48E(d)(5) of the Internal Revenue Code (Code).[1] The provisions of this notice apply with respect to an Applicable Credit Property the construction of which begins before the later of January 1, 2027, or the issuance of further guidance.

SECTION 2. BACKGROUND

On January 8, 2024, the Treasury Department and the IRS published Notice 2024-9, 2024-2 I.R.B. 358, providing that an Applicable Entity may attest, under penalties of perjury, that it has reviewed the requirements for the Increased Cost Exception and the Non-Availability Exception (each defined in section 2 of Notice 2024-9) provided under §§ 45(b)(10)(D), 48(a)(13), 45Y(g)(12)(D), or 48E(d)(5), as applicable, and has made a good faith determination that the Applicable Credit Property qualifies for the Increased Cost Exception, the Non-Availability Exception, or both. The attestation must be signed by a person with the legal authority to bind the Applicable Entity in federal tax matters and must be attached to a Form 8835, *Renewable Electricity Production Credit*; Form 3468, *Investment Credit*; or other applicable form required to be filed by the Applicable Entity to make an elective payment election under § 6417. The notice states that the Treasury Department and the IRS will accept such attestations as establishing that one or both statutory exceptions to the application of the Statutory Elective Payment Phaseouts are met with respect to Applicable Credit Property the construction of which begins before January 1, 2025.

SECTION 3. CONTINUED TRANSITION

.01 *Exception for Eligible Construction*. If an Applicable Entity provides an attestation described in section 3.02 of this notice with respect to an Applicable Credit Property the construction of which begins before the later of January 1, 2027, or the issuance of further guidance (Eligible Construction), the Treasury Department and the IRS will treat the attestation as establishing that one or both statutory exceptions to the application of the Statutory Elective Payment Phaseouts are met with respect to the Applicable Credit Property.

.02 *Attestation*. An attestation is described in this section 3.02 if an Applicable Entity attests, under penalties of perjury, that it has reviewed the requirements for the Increased Cost Exception and the Non-Availability Exception provided under §§ 45(b)(10)(D), 48(a)(13), 45Y(g)(12)(D), or 48E(d)(5), as applicable, and has made a good faith determination that the qualified facility, energy project, or qualified investment with respect to a qualified facility or energy storage technology, as applicable, qualifies for either the Increased Cost Exception or the Non-Availability Exception, or both. The attestation described in this section 3.02 must be signed by a person with the legal authority to bind the Applicable Entity in federal tax matters and must be attached to a Form 8835, *Renewable Electricity Production Credit*; Form 3468, *Investment Credit*; or other applicable form required to be filed by the Applicable Entity to make an elective payment election under § 6417.

.03 *Recordkeeping*. An Applicable Entity providing an attestation described in section 3.02 of this notice must meet the general recordkeeping requirements under § 6001 and the regulations thereunder to substantiate its attestation.

SECTION 4. PAPERWORK REDUCTION ACT

Any collection burden associated with this notice is accounted for in Office of Management and Budget (OMB) control numbers 1545-0123 and 1545-0047. The collection of information (the attestation detailed in section 3 of this notice) is associated with the IRA-related changes to Form 3468 and Form 8835 and is approved, and will continue to be approved, under OMB control numbers 1545-0123 and 1545-0047. The IRS will use this attestation to allow exceptions to the phaseout of elective payments. This notice does not alter any previously approved information collection requirements and does not create new collection requirements not already approved by OMB.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2024-9 is modified by extending the date for Eligible Construction.

SECTION 6. DRAFTING INFORMATION

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

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code.

Part IV

Second Remedial Amendment Cycle for § 403(b) Pre-approved Plans: Issuance of Opinion Letters, Plan Adoption Deadline, Opening of Determination Letter Program, and Related Issues

Announcement 2024-38

Section 1. Purpose and Scope

The Internal Revenue Service (IRS) intends to begin issuing opinion letters regarding the satisfaction in form of § 403(b) pre-approved plans with respect to the requirements of § 403(b) of the Internal Revenue Code, including the 2022 Cumulative List of changes in those requirements.[1] Opinion letter applications were filed with the IRS for the second remedial amendment cycle (Cycle 2) under the remedial amendment cycle system for § 403(b) pre-approved plans established under Rev. Proc. 2019-39, 2019-42 IRB 945. The IRS expects to issue the opinion letters by November 29, 2024, or as soon as possible thereafter.

This announcement provides a deadline for when an employer intending to maintain a Cycle 2 § 403(b) pre-approved plan must adopt that plan and the period during which the IRS will accept an application for an individual determination letter from an adopting employer of a Cycle 2 § 403(b) pre-approved plan that is eligible to submit a determination letter request.

This announcement also discusses a procedural restatement rule that applies to all pre-approved plans and provides a reminder for adopting employers of § 403(b)(9) retirement income account plans of a requirement provided by § 403(b)(9).

Section 2. Background

Rev. Proc. 2019-39, in relevant part, sets forth a system of recurring remedial amendment cycles and recurring remedial amendment periods for correcting form defects in § 403(b) pre-approved plans. Section 13.04 of Rev. Proc. 2019-39 includes a procedural rule regarding restatements for the first remedial amendment cycle (Cycle 1) for § 403(b) pre-approved plans providing that a plan that is restated using a Cycle 1 § 403(b) pre-approved plan will not be treated as superseding a previously adopted interim amendment. This restatement rule is analogous to the restatement rule for qualified defined contribution and defined benefit pre-approved plans that currently applies to the third remedial amendment cycle (Cycle 3) for qualified pre-approved plans pursuant to section 15.07 of Rev. Proc. 2016-37, 2016-29 IRB 136.

Rev. Proc. 2021-37, 2021-38 IRB 385, sets forth the procedures for a provider to apply for an opinion letter with respect to a Cycle 2 § 403(b) pre-approved plan.

Section 25 of Rev. Proc. 2023-37, 2023-51 IRB 1491, sets forth the procedures for an adopting employer of a § 403(b) pre-approved plan, including a Cycle 2 plan, to apply for a determination letter with respect to its plan.

Section 3. Deadline for Employer Adoption of Cycle 2 § 403(b) Pre-approved Plans

An employer intending to maintain a § 403(b) pre-approved plan for Cycle 2 for § 403(b) pre-approved plans must adopt that pre-approved plan on or before December 31, 2026. See section 5.02 of Rev. Proc. 2023-37.

Section 4. Determination Letter Program for an Adopter of a Cycle 2 § 403(b) Pre-approved Plan

An adopting employer of a Cycle 2 § 403(b) pre-approved plan may generally apply for an individual determination letter (if otherwise eligible) during the period beginning January 1, 2025, and ending December 31, 2026. Additional information regarding individual determination letter applications for § 403(b) pre-approved plans, including guidance on employer eligibility to apply for a determination letter for a pre-approved plan and the filing requirements for Form 5307 (or Form 5300, if applicable), may be found in section 25 of Rev. Proc. 2023-37.

Section 5. Clarification on Applicability of the Restatement Rule

The restatement rule in Rev. Proc. 2019-39 and Rev. Proc. 2016-37 does not specifically address its application to Cycle 2 (and future) § 403(b) pre-approved plans or Cycle 4 (and future) qualified pre-approved plans. Future guidance will clarify that the restatement rule in Rev. Proc. 2019-39 and Rev. Proc. 2016-37 continues to apply to all pre-approved plans, including Cycle 2 (and future) § 403(b) pre-approved plans and Cycle 4 (and future) qualified pre-approved plans.

Section 6. Reminder for Adopting Employers of § 403(b)(9) Retirement Income Account Plans

Section 403(b)(9) provides that a retirement income account must either be established or maintained by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A). Thus, for a retirement income account plan, the adopting employer may be a church, a church-controlled organization described in § 501(c)(3) that is a qualified church-controlled

[1] The 2022 Cumulative List of Changes in Section 403(b) Requirements for Section 403(b) Pre-approved Plans was published as Notice 2022-8, 2022-7 IRB 491.

organization within the meaning of § 3121 (QCCO), a church-controlled tax-exempt organization listed in § 501(c)(3) that is not a QCCO, or a minister. However, pursuant to the "established or maintained" language of § 403(b)(9), if the plan is not established by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A), the plan must be maintained by a church, or a convention or association of churches, including an organization described in § 414(e)(3)(A).

Section 7. Paperwork Reduction Act

The collection of information contained in Rev. Proc. 2021-37 with respect to the § 403(b) pre-approved plan program has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0047.

Section 8. Drafting Information

The principal author of this announcement is Sarah Sandusky of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this announcement, contact Employee Plans at (513) 975-6319 (not a toll-free number).

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

Announcement 2024-39

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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 November 25, 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
Heritage Foundation for Art & Cultural Sustainability	1/1/2021	New Orleans, LA
Esperanza Education Foundation	7/1/2020	Albuquerque, NM

Notice of Proposed Rulemaking

Administrative Requirements for an Election to Exclude Applicable Unincorporated Organizations from the Application of Subchapter K

REG-116017-24

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would provide certain administrative requirements for unincorporated organizations taking advantage of modifications to the rules governing elections to be excluded from the application of partnership tax rules. These proposed regulations would affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election.

DATES: Written or electronic comments must be received by January 21, 2025. A public hearing on these proposed regulations has been scheduled for February 7, 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 21, 2025. If no outlines are received by January 21, 2025, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on February 5, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-116017-24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Public Hearing" section. 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-116017-24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Cameron Williamson at (202) 317-6684; and concerning submissions of comments and requests for a public hearing, contact the Publications and Regulations Section at (202) 317-6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) issued by the Secretary of the Treasury or her delegate (Secretary) under the express authority granted under sections 761(a), 6031(a), 6417(d) and (h), and 7805(a) of the Code (proposed regulations).

Section 761(a) provides, in part, an express grant of regulatory authority for section 761(a) stating, "[u]nder regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or a part of this subchapter."

Section 6031(a) provides an express grant of a regulatory authority for the Secretary to prescribe in forms or regulations partnership reporting information required "for the purpose of carrying out the provisions of subtitle A."

Section 6417(d) provides several express delegations of authority to the Secretary to enforce requirements for elective payments of applicable credits under section 6417 and recapture excessive payments. Section 6417(h) requires the Secretary to issue 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 this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

Finally, section 7805(a) 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. *Elective Payment of Applicable Credits*

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an "applicable entity" (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an "applicable credit" (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary to provide rules for making elections under section 6417. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On March 11, 2024, the Treasury Department and the IRS published in the ***Federal Register*** (88 FR 40528) final reg-

ulations (TD 9988) providing guidance on the section 6417 elective payment election (section 6417 regulations). Section 1.6417-2(a)(1)(iv) provides that partnerships are not applicable entities described in section 6417(d)(1)(A) or §1.6417-1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in §1.6417-1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, §1.6417-2(a)(1)(iii) provides that if an applicable entity is a co-owner in an applicable credit property (as defined in §1.6417-1(e)), through an organization that has made a valid election under section 761(a) (section 761(a) election) to be excluded from the application of the partnership tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property is treated as a separate applicable credit property owned by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such applicable credit property.

Also on March 11, 2024, the Treasury Department and the IRS published in the ***Federal Register*** (89 FR 17613) proposed amendments (REG-101552-24) to the regulations under section 761(a) to carry out the purposes of section 6417 (March 2024 proposed regulations). Generally, the March 2024 proposed regulations would have amended certain provisions of §1.761-2 to provide that unincorporated organizations meeting certain requirements (applicable unincorporated organizations) are eligible for certain modifications to the existing requirements for making a section 761(a) election.

Concurrently with the publication of these proposed regulations, the Treasury Department and the IRS are publishing in the Rules and Regulations section of this edition of the ***Federal Register*** a Treasury decision (TD 10012, RIN 1545-BR09) adopting certain provisions of §1.761-2 of the March 2024 proposed regulations as final regulations under section 761(a) (final regulations). The provisions of §1.761-2 of the final regulations are explained in greater detail in the preamble to the final regulations. The provisions of §1.761-2 in effect as of January 19, 2025 are referred to in this preamble as "revised §1.761-2."

II. *Overview of Section 761(a) and Revised §1.761-2*

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities, provided that the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

Unincorporated organizations seeking to make an election to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be availed of for the purposes listed in section 761(a)(2), that is, for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. Pursuant to the authority in section 761(a), revised §1.761-2(a)(3) provides additional requirements for an unincorporated organization to elect to be excluded from the application of subchapter K under section 761(a)(2). Specifically, revised §1.761-2(a)(3) requires that the participants in the joint production, extraction, or use of property: (i) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (ii) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used, and (iii) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year.

The final regulations modify the co-ownership and joint marketing requirements for "applicable unincorporated organizations." Under revised §1.761-2(a)(4)(ii), an applicable unincorporated organization is defined as an unincorporated organization (1) that is owned, in whole or in part, by one or more applicable entities, as defined in section 6417(d)(1)(A) and §1.6417-1(c), (2) the members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of any property produced, extracted, or used, and any associated renewable energy credits or similar credits, (3) that, pursuant to the joint operating agreement, is organized exclusively to own and operate applicable credit property (as defined in §1.6417-1(e)), (4) for which one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property, (5) the members of which are able to compute their income without the necessity of computing partnership taxable income, and (6) which is not a syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association.

Revised §1.761-2(b) provides rules for making a section 761(a) election. Revised §1.761-2(b)(2)(i) generally provides that a section 761(a) election must be made in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, *U.S. Return of Partnership Income*, which must contain, in lieu of the information required by Form 1065 and the instructions relating thereto, the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, show-

ing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under §1.761-2(a)(1) and either §1.761-2(a)(2) or (3) (taking into account revised §1.761-2(a)(4), as applicable); a statement that all of the members of the organization elect to be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

If an unincorporated organization does not make the section 761(a) election provided in this manner, revised §1.761-2(b)(2)(ii) provides (as it provided before the final regulations) that the organization will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization (deemed election rule). Although the following facts are not exclusive, the requisite intent may be indicated if (1) at the time of the formation of the organization there is an agreement among the members that the organization be excluded from the application of subchapter K beginning with the first taxable year of the organization, or (2) the members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

III. *Reason for Proposed Regulations*

Section 6417(d)(5) provides that as a condition of, and prior to, any amount being treated as a payment that is made by an applicable entity, the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments. Section 6417(h) requires the Secretary to issue regulations or other guidance to ensure that the amount of a payment or deemed payment made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable.

The Treasury Department and the IRS have determined that additional guidance outlining certain administrative requirements is needed to comply with these statutory directives. After an unincorporated organization makes a section 761(a) election, each member may increase or reduce (even to zero) its interest in the unincorporated organization without affecting the validity of the section 761(a) election. As a result, the information submitted to the IRS in connection with an organization's section 761(a) election, as required under revised §1.761-2(b), can become inaccurate at any time without notice to the IRS. This lack of reliable and accurate information about the applicable entity owners (if any) of an applicable unincorporated organization constrains the IRS's ability to ensure that the amount of payments or deemed payments made under section 6417 are commensurate with the amount of applicable credits that would otherwise be allowable, as directed under section 6417(h).

This problem is compounded by the deemed election rule in revised §1.761-2(b)(2)(ii). A deemed election obscures any record of an organization's members (including any applicable entities) that are subject to a section 761(a) election and can be discovered by the IRS only upon examination. In contrast, a written election is a relatively simple and effective means of identifying any applicable entity owners of applicable credit property held through an applicable unincorporated organization with a valid section 761(a) election. Moreover, members of an organization who form an entity or enter into long-term contracts together are especially likely to know that their activities could create a partnership subject to subchapter K. The Treasury Department and the IRS have concerns that deemed elections are not appropriate in such situations, especially when (as is anticipated to be typical) applicable entities intend to make section 6417 elections with respect to applicable credit property owned by an unincorporated organization, as such elections are generally permitted only when the organization has a valid section 761(a) election.

Explanation of Provisions

The proposed regulations would impose new requirements on applicable unincorporated organizations whose section 761(a) elections would not be valid without the application of revised §1.761-2(a)(4)(iii) (specified modifications for applicable unincorporated organizations). Proposed §1.761-2(a)(4)(iv)(A) would provide that a specified applicable unincorporated organization's section 761(a) election will terminate as a result of a "terminating transaction." A terminating transaction is the acquisition or disposition of an interest in a specified applicable unincorporated organization, other than as the result of a transfer between a disregarded entity (as defined in §1.6417-1(f)) and its owner since such transfer does not change the identity of the applicable entity for purposes of section 6417. *See* §1.6417-2(a)(1)(ii); *see also* proposed §1.6417-1(f) contained in the notice of proposed rulemaking *Entities Wholly Owned by Indian Tribal Governments* (REG-113628-21) published in the ***Federal Register*** (89 FR 81871) on October 9, 2024, which alters the definition of disregarded entities for purposes of section 6417.

Terminating transactions will not terminate an applicable unincorporated organization's section 761(a) election if the organization meets the requirements to make a new section 761(a) election and makes such an election not later than the time prescribed by §1.6031(a)-1(e) (including extensions thereof) for filing a partnership return with respect to the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the section 761(a) election, the organization continued to have taxable years and such taxable years were determined by reference to the taxable year in which the organization made the section 761(a) election (hypothetical partnership taxable year). Such election will protect the organization's section 761(a) election against all terminating

transactions in a hypothetical year only if it contains, in addition to the information required by §1.761-2(b), information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred. If a new election is not timely made, the section 761(a) election would terminate on the first day of the taxable year beginning after the hypothetical partnership taxable year in which one or more terminating transactions occurred. Proposed §1.761-2(a)(5)(iv) would add *Example 4* to illustrate this new rule. These provisions are inapplicable to an organization that is no longer eligible to elect to be excluded from the application of subchapter K. When an organization becomes ineligible to make a section 761(a) election, the organization's section 761(a) election automatically terminates, and the organization must begin complying with the requirements of subchapter K.

The proposed regulations would also clarify that the deemed election rule in §1.761-2(b)(2)(ii) does not apply to specified applicable unincorporated organizations. This change is necessary to ensure that an unincorporated organization cannot benefit from the modifications in revised §1.761-2(a)(4)(iii) without providing written information to the IRS about its members. The change also ensures that a specified applicable unincorporated organization that terminates as the result of a terminating transaction cannot have its election restored without making a new election in writing. However, if such an organization can make a valid section 761(a) election without the application of either of the specified modifications in revised §1.761-2(a)(4)(iii), the organization may be deemed to make such an election under the deemed election rule.

In addition, the proposed regulations would clarify that an applicable unincorporated organization making a section 761(a) election must submit all information required by the instructions to Form 1065, *U.S. Return of Partnership Income*, for making a section 761(a) election. This requirement is intended to ensure that the organization making a section 761(a) election provides all of the information necessary for the IRS to properly administer section 6417 with respect to applicable unincorporated organizations making a section 761(a) election.

The proposed regulations would also update the procedure for obtaining permission to revoke a section 761(a) election. Prior to revision in the final regulations, §1.761-2(b)(3) provided that taxpayers could revoke a section 761(a) election by submitting an application for permission to revoke a section 761(a) election to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply. Though this language did not define what the application would include, it historically has been interpreted to mean a private letter ruling request. However, the language in §1.761-2(b)(3) was imprecise, lists an incorrect address, and was removed by the final regulations. The proposed regulations would clarify that such an application must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024-1 or successor guidance. This language would ensure that the process for making this application is up-to-date and clear. Taxpayers may continue to submit applications for permission to revoke an election by requesting a private letter ruling and can rely on the process in Revenue Procedure 2024-1 or successor guidance prior to the date regulations finalizing these proposed regulations are published in the ***Federal Register***.

Proposed Applicability Dates

These proposed regulations are proposed to apply to taxable years ending on or after November 20, 2024

Special Analyses

I. *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.

II. *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.

These proposed regulations mention reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to make and maintain an election out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

These proposed regulations would also require unincorporated organizations to provide all information required by the instructions to Form 1065 for making a section 761(a) election. This reporting requirement will be approved by OMB under 1545-0123 for business filers and 1545-0047 for tax-exempt organizations in accordance with the PRA procedures in 5 CFR 1320.10.

These proposed regulations would include recordkeeping requirements for certain unincorporated organizations to track changes in ownership of interests in each such organization. The organizations can maintain these records in any manner they deem appropriate. The recordkeeping is needed to determine whether a new written section 761(a) election must be filed with the IRS. IRS will seek OMB approval under a new OMB Control Number (1545-NEW) for the burden on business filers and tax-exempt organizations. The associated burden for the recordkeeping is estimated as follows:

Estimated number of respondents: 1,000.

Estimated average annual burden per response: 1 hour.

Estimated total annual reporting burden: 1,000 hours.

The recordkeeping in this proposed rulemaking has been submitted to OMB for review in accordance with the PRA under OMB Control Number 1545-NEW. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain, with copies to the IRS. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-116017-24 on the Subject line). Comments on the collection of information should be received by January 21, 2025**.** Comments are specifically requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

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

1. Need for and Objectives of the Rule

As discussed in this preamble, the proposed regulations are intended to ensure that each section 761(a) election by a specified applicable unincorporated organization provides all of the information necessary for the IRS to comply with the directives of section 6417(d) and (h).

2. Affected Small Entities

The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2024 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to these proposed regulations and in this IRFA, section 761(a) and these proposed regulations may affect a variety of different entities across several different industries as there are 12 different applicable credits for which an elective payment election under section 6417(a) may be made. There is uncertainty as to the exact number of small businesses within this group. The current estimated number of respondents to the section 6417 regulations is 20,000 taxpayers, and it is likely that a fraction of that number would be respondents to these proposed regulations.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when taxpayers start to make the section 761(a) election using the guidance and procedures provided in the final regulations and these proposed regulations.

3. Impact of the Rules

The proposed regulations would require certain applicable unincorporated organizations to submit section 761(a) elections in writing more frequently than they otherwise would have (though no more than once per year). In addition, a specified applicable unincorporated organization will be responsible for identifying any transactions involving ownership interests therein. Applicable unincorporated organizations that make a section 761(a) election will have administrative costs related to reading and understanding the rules as well as recordkeeping and reporting requirements. The costs will vary across different-sized entities and across the type of project(s) in which such entities are engaged.

Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burdens of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

4. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, in adopting the terminating transaction rules, the Treasury Department and the IRS considered requiring only the parties to a transaction involving an interest in a specified applicable unincorporated organization to report such transaction. However, the Treasury Department and the IRS decided that such an option would increase the opportunity for duplication, fraud, improper payments, or excessive payments under section 6417. Section 6417(d)(5) specifically authorizes

the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 6417 as a condition of, and prior to, any amount being treated as a payment which is made by an applicable entity under section 6417. As described in the preamble to these proposed regulations, these proposed rules carry out that Congressional intent by ensuring that every member of a specified applicable unincorporated organization is informed about all transactions involving interests in the specified applicable unincorporated organization that could affect the amount or owner of any payments under section 6417.

Comments are requested on the requirements in the proposed regulations, including specifically whether there are less burdensome alternatives that do not increase the risk of duplication, fraud, improper payments, or excessive payments under section 6417.

IV. *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 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 Tribal governments or by the private sector in excess of that threshold.

V. *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.

VI. *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 does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on April 5, 2024, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 761(a) proposed rules published on March 11, 2024, which helped inform the development of these proposed regulations.

VII. *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*

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) 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." As section 1 of 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). 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. These proposed regulations are necessary for compliance with sections 6417(d)(5) and (h) and do not impose undue burdens on Tribal sovereignty.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to 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. 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 has been scheduled for February 7, 2025, beginning at 10 a.m. EST, 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. Participants may alternatively attend the public 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 and the time to be devoted to each topic by January 21, 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 available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by January 21, 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-116017-24 and the language "TESTIFY In Person." For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-116017-24.

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-116017-24 and the language "TESTIFY Telephonically." For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-116017-24.

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-116017-24 and the language "ATTEND In Person." For example, the subject line may say: Request to ATTEND Hearing In Person for REG-116017-24. Requests to attend the public hearing must be received by 5 p.m. EST on February 5, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also 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-116017-24 and the language "ATTEND Hearing Telephonically." For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-116017-24. Requests to attend the public hearing must be received by 5 p.m. EST on February 5, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section 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. EST on February 4, 2025.

Statement of Availability of IRS Documents

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

Drafting Information

The principal author of these proposed regulations is Cameron Williamson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 19, 2025**,** continues to read in part as follows:

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

* * * * *

Section 1.761-2 also issued under 26 U.S.C. 446(b), 761(a), 6031(a), 6417(d), and 6417(h).

* * * * *

Par. 2. Section 1.761-2, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 19, 2025, is further amended by:

a. Adding paragraphs (a)(4)(iv) and (a)(5)(iv).

b. Revising the last sentence of paragraph (b)(2)(i).

c. Revising the first sentence of paragraph (b)(2)(ii).

d. Adding a sentence to the end of paragraph (b)(3)(i).

e. Revising paragraph (f).

The additions and revisions read as follows:

§1.761-2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(4) * * *

(iv) *Termination upon change in interest*—(A) *In general*. Except as provided in paragraph (a)(4)(iv)(E) of this section, an

election under this paragraph (a) by a specified applicable unincorporated organization (as defined in paragraph (a)(4)(iv)(C) of this section) will terminate as the result of a terminating transaction (as defined in paragraph (a)(4)(iv)(D) of this section) involving an interest in that organization. Such termination will be effective beginning on the first day of the taxable year beginning after the hypothetical partnership taxable year (as defined in paragraph (a)(4)(iv)(B) of this section) in which the terminating transaction occurred.

(B) *Hypothetical partnership taxable year*. The term *hypothetical partnership taxable year* means, with respect to a specified applicable unincorporated organization, the period of time that would have been the organization's taxable year if, after the taxable year with respect to which the organization first made the election under this paragraph (a), the organization continued to have taxable years and such taxable years were determined by reference to the taxable year required to be used by the organization to make the election.

(C) *Specified applicable unincorporated organization*. The term *specified applicable unincorporated organization* means an applicable unincorporated organization that has made an election under this paragraph (a) and such election would not be valid without the application of either paragraph (a)(4)(iii)(A) or (B) of this section.

(D) *Terminating transaction*. The term *terminating transaction* means an acquisition or disposition of an interest in a specified applicable unincorporated organization (including transfers among members of the organization), other than as the result of a transfer between a disregarded entity (as defined in §1.6417-1(f)) and its owner.

(E) *Exception*. If a specified applicable unincorporated organization meets the requirements to make a new election under this paragraph (a) and makes such an election no later than the time that would have been prescribed by §1.6031(a)-1(e) (including extensions thereof) for filing a partnership return with respect to the hypothetical partnership taxable year in which one or more terminating transactions occurred, the organization's election will not terminate under paragraph (a)(4)(iv)(A) of this section as a result of any terminating transaction occurring during that hypothetical partnership taxable year. Such election must contain, in addition to the information required by paragraph (b) of this section, information about every terminating transaction that occurred in the hypothetical partnership taxable year, including the parties thereto and the interest(s) transferred.

(5) * * *

(iv) *Example 4*—

(A) *Facts*. The facts are the same as in paragraph (a)(5)(ii)(A) of this section (*Example 2*), except that T owns a 60% interest in TLLC and Y owns a 40% interest in TLLC. TLLC's first taxable year ends on September 30th of year 1. On or before the 15th day of the third month following that date, TLLC makes a valid election under section 761(a) with respect to year 1. On August 31 of year 3, T sells all of T's interest in TLLC to Q.

(B) *Analysis*. TLLC is a specified applicable unincorporated organization. Accordingly, the sale of T's interest is a terminating transaction and will terminate TLLC's section 761(a) election unless TLLC makes a new section 761(a) election on or before the 15th day of the third month following September 30th of year 3. This analysis would not be different if, sometime between the end of TLLC's first taxable year and the hypothetical partnership taxable year ending on September 30th of year 3, TLLC's taxable year would have changed under the rules of subchapter K (for example, as a result of a change in T's taxable year).

(b) * * *

(2) * * *

(i) * * * Such partnership return must contain the following information: the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and taxpayer identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained); and all information required by the form and instructions to the Form 1065 for an election under paragraph (a) of this section.

(ii) * * * If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (but not a specified applicable unincorporated organization) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it will nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. * * *

(3) * * *

(i) * * * Application for permission to revoke the election must be made by submitting a letter ruling request that complies with the requirements of Rev. Proc. 2024-1 or successor guidance.

* * * * *

(f) *Applicability date*—(1) *In general*. Except as provided in paragraphs (d) and (f)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2) *Exceptions*. Paragraphs (a)(4)(iv) and (a)(5)(iv) of this section, the fifth sentence of paragraph (b)(2)(i) of this section, the first sentence of paragraph (b)(2)(ii) of this section, and the last sentence of paragraph (b)(3)(i) of this section, apply to taxable years ending on or after November 20, 2024.

Heather C. Maloy,
Acting Deputy Commissioner.

(Filed by the Office of the Federal Register November 19, 2024, 8:45 a.m., and published in the issue of the Federal Register for November 20, 2024, 89 FR 91617)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

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[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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[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.

Internal Revenue Service
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INTERNAL REVENUE BULLETIN

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

We Welcome Comments About the Internal Revenue Bulletin

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