INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2025–4
January 20, 2025

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

Notice 2025-3, page 488.

This notice provides transitional relief from backup withholding tax liability and associated penalties for any DeFi broker that fails to withhold and pay the backup withholding tax: (1) for any sale of a digital asset effected by a DeFi broker during calendar year 2027; and (2) for any sale of a digital asset effected by a DeFi broker during calendar year 2028 for a customer (payee), if the DeFi broker submits that payee's name and tax identification number (TIN) combination to the IRS's TIN Matching Program and receives a response that the name and TIN combination matches IRS records. For sales effected before January 1, 2029, this notice also provides that (1) a DeFi broker may treat a customer as an exempt foreign person if the customer has not previously been classified as a U.S. person by the DeFi broker, and the information that the DeFi broker has for the customer includes a residence address that is not a U.S. address and (2) the IRS will not impose penalties with respect to any decrease in the value of received digital assets between the time of the transaction and the time the broker liquidates 24 percent of the received digital assets, provided the broker immediately liquidates the digital assets.

Rev. Proc. 2025-12, page 512.

On December 30, 2024, Revenue Procedure 2025-1 was published with an incorrect user fee for requests for tax treaty limitation of benefits determinations. I.R.B. 2025-1. This revenue procedure contains the correct user fee for requests for tax treaty limitation of benefits determinations. Rev. Proc. 2025-1 is modified.

ADMINISTRATIVE, INCOME TAX

T.D. 10019, page 482.

This document contains final regulations that amend the definition of "coverage month" and amend certain other rules in existing income tax regulations regarding the computation of an individual taxpayer's premium tax credit. The coverage month amendment generally provides that, in computing a premium tax credit, a month may be a coverage month for an individual if the amount of the premium paid, including by advance payments of the premium tax credit, for the month for the individual's coverage is sufficient to avoid termination of the individual's coverage for that month. The final regulations also amend the existing regulations relating to the amount of enrollment premiums used in computing the taxpayer's monthly premium tax credit if a portion of the monthly enrollment premium for a coverage month is unpaid. Finally, the final regulations clarify when an individual is considered to be not eligible for coverage under a State's Basic Health Program. The final regulations affect taxpayers who enroll themselves, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange and may be allowed a premium tax credit for the coverage.

EMPLOYMENT TAX

Rev. Proc. 2025-10, page 492.

The Revenue Procedure provides updated guidance, modifying and superseding Rev. Proc. 85-18, to be consistent with amendments made to section 530, as well as to clarify the definition of "employee", the timeliness requirement for filing required returns, and the application of the reasonable basis safe haven.

Rev. Rul. 2025-3, page 443.

This Revenue Ruling addresses the application of Section 530 of the Revenue Act of 1978 (section 530), section 3509 rates, and the requirements to issue a Notice of Employment Tax Determination Under IRC § 7436 (§ 7436 Notice) in several distinct factual situations.

Finding Lists begin on page ii.

EXCISE TAX

Rev. Proc. 2025-9, page 491.

Section 5000D of the Internal Revenue Code imposes an excise tax on applicable sales of designated drugs by manufacturers, producers, and importers during statutorily defined periods. This revenue procedure provides a safe harbor and safe harbor percentage that manufacturers, producers, and importers may use to identify applicable sales of designated drugs made during such periods.

INCOME TAX

REG-134420-10, page 513.

These proposed regulations would amend 26 CFR 1.1502-80(d) to clarify the non-applicability of section 357(c) to consolidated groups.

Rev. Proc. 2025-11, page 501.

This revenue procedure provides procedural and clarifying guidance applicable to section 48E(h). This guidance is being issued simultaneously with final regulations concerning the technology neutral low-income communities bonus credit program (Program) established pursuant to the Inflation Reduction Act of 2022 as section 48E(h) of the Internal Revenue Code. Applicants investing in certain clean electricity generation facilities may apply for an allocation of environmental justice capacity limitation (Capacity Limitation) to increase the amount of the clean electricity investment credit for the taxable year in which the facility is placed in service. The final regulations describe definitions and requirements that are applicable for the Program. The final regulations affect applicants seeking allocations of Capacity Limitation to claim the increased clean electricity investment credit under section 48E for the taxable year in which the facility is placed in service.

T.D. 10018, page 446.

These final regulations amend consolidated return regulations and controlled group of corporations regulations to reflect statutory changes, modernize language, and enhance clarity.

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

I.R.C. Section 3509—Determination of Employer's Liability for Certain Employment Taxes (Also: I.R.C. Section 7436 and Section 530 of the Revenue Act of 1978)

Rev. Rul. 2025-3

ISSUES

1. Whether section 530 of the Revenue Act of 1978, Pub. L. No. 95-600, as amended (section 530), or the reduced rates of § 3509 of the Internal Revenue Code (the Code) apply in the five situations set out below.

2. Whether the Internal Revenue Service (IRS) will issue a Notice of Employment Tax Determination Under IRC § 7436 (§ 7436 Notice) in the five situations, set out below.

FACT SITUATIONS

Situation 1. Taxpayer (TP) hires individuals who provide services to TP during the year. For those services, TP pays each individual a weekly fixed amount and a weekly bonus amount. TP does not withhold or pay federal employment taxes with regard to any of the payments and reports the total amount of the fixed weekly amounts and the weekly bonus amounts on Form 1099-NEC "Nonemployee Compensation." During an audit of TP by the IRS for the year, the IRS determines (1) that TP does not meet the statutory requirements for section 530 relief, and (2) that the individuals are employees of TP. The IRS proposes to assess federal employment taxes on the weekly fixed amounts and the weekly bonus amounts, which should have been reported as wages on Form 941 "Employer's QUARTERLY Federal Tax Return," and Forms W-2 "Wage and Tax Statement." TP claims it satisfies the statutory requirements for section 530 relief and does not agree that the individuals are its employees.

Situation 2. TP employs individuals who perform services during the year. TP treats the individuals as employees for the services that they perform. For those services, TP pays each individual a weekly salary and a weekly bonus amount. TP treats the weekly salary as wages for federal employment tax purposes. TP withholds and pays federal employment taxes with respect to the weekly salary and reports the salary and federal employment taxes on Form 941 and Forms W-2. TP does not treat the weekly bonus amounts as wages for federal employment tax purposes. It does not withhold or pay any federal employment taxes with regard to the bonus amounts and reports the bonus amounts on Forms 1099-NEC. During an audit of TP by the IRS for the year, the IRS concludes that the bonus amounts are wages. The IRS proposes to assess federal employment taxes on the bonus amounts, which should have been reported as wages on Form 941 and Forms W-2. TP claims it satisfies the statutory requirements for section 530 relief with respect to the bonus amounts and does not agree that the bonus amounts are wages.

Situation 3. Same facts as situation 2 except TP does not report the weekly bonus amounts on Forms 1099-NEC or any other information return.

Situation 4. Same facts as situation 2 except TP does not report the weekly bonus amounts on Forms 1099-NEC or any other information return and does not claim it satisfies the statutory requirements for section 530 relief with respect to the bonus amounts.

Situation 5. TP employs individuals who perform services during the year. TP enters into a contract with a third party (3P) to pay each individual a weekly salary, withhold and pay federal employment taxes, and file federal employment tax returns.[1] 3P pays the weekly salaries, withholds, pays federal employment taxes, and reports the weekly salaries and taxes on Form 941 and Forms W-2 using its own employer identification number (EIN). In December of that same year, TP pays a year-end bonus amount directly to each individual for the individual's services during the year but does not treat the year-end bonus amounts as wages. TP does not withhold or pay any federal employment taxes or report the bonus amounts on any information return. During an audit of TP by the IRS for the year, the IRS concludes that the bonus amounts are wages. The IRS proposes to assess federal employment taxes on the bonus amounts, which should have been reported as wages on Form 941 and Forms W-2. TP claims it satisfies the statutory requirements for section 530 relief with respect to the bonus amounts and does not agree the bonus amounts are wages.

LAW AND ANALYSIS

An employer is liable for federal employment taxes on wages paid to employees. Federal employment taxes include Federal Insurance Contributions Act (FICA) taxes, Railroad Retirement Tax Act (RRTA) taxes,[2] Federal Unemployment Tax Act (FUTA) taxes, and the collection of income tax at source on wages (income tax withholding).

In general, § 3102 of the Code requires an employer to withhold and pay to the IRS the employee share of FICA taxes from wages when paid to the employee. Furthermore, § 3111 generally also requires the employer to pay to the IRS the employer share of FICA taxes at the same time. Section 3121(a) defines "wages" for FICA tax purposes as all remuneration for employment, including the cash value of

[1] A taxpayer may choose to enter into an agreement with a third party in which the third party agrees to perform some or all of the employer's federal employment payment, withholding, and reporting responsibilities. For purposes of simplicity, this revenue ruling does not address the different variations of third-party payor arrangements, and assumes 3P correctly used its own EIN. However, depending on the facts and circumstances and the type of arrangement, an employer who uses a third party to perform federal employment tax functions on its behalf may remain solely liable for federal employment taxes, may become jointly and severally liable for such taxes, or may be relieved of liability for such taxes. This revenue ruling does not address which party will be ultimately liable for any unpaid employment taxes, as these discussions are beyond the scope of this revenue ruling.

[2] For purposes of simplicity, this revenue procedure does not discuss the application of these rules to RRTA. However, rules similar to those discussed with respect to Section 530 apply for purposes of determining whether a taxpayer will not be liable for RRTA taxes, with respect to an individual or class of workers (though the reduced rates of § 3509 discussed in this revenue procedure do not apply for purposes of RRTA).

all remuneration (including benefits) paid in any medium other than cash, unless specifically excepted. Section 3121(b) generally defines "employment" as any service, of whatever nature, performed by an employee for the person employing him unless a specific exception applies. Similarly, § 3301 imposes on every employer an obligation to pay FUTA taxes on wages as defined in § 3306(b). Section 3306(b) and (c) contain similar definitions to FICA for "wages" and "employment," respectively, for FUTA tax purposes. Section 3402(a) imposes the obligation on an employer to withhold income taxes from wages as defined in § 3401(a). Section 3401(a) provides that the term "wages" means all remuneration for services performed by an employee for his employer including the cash value of all remuneration (including benefits) paid in any medium other than cash, unless a specific exception applies.

The definitions of "wages" and "employment" for FICA, FUTA, and income tax withholding purposes are premised on an individual being an employee and are not applied when an individual is properly classified as an independent contractor or has some other non-employee status. If an individual is properly classified as an independent contractor, the individual's earnings are subject to self-employment tax, which consists of social security and Medicare taxes, if the other requirements for reporting self-employment taxes are met. There is no FUTA tax for self-employed individuals.

For employment tax purposes, an employee generally is any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. *See* §§ 31.3121(d)-1(c), 31.3306(i)-1, and 31.3401(c)-1 of the Employment Tax Regulations. Generally, an employer-employee relationship exists when the person for whom services are performed has the right to direct and control the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the direction and control of the employer not only as to what shall be done but how it shall be done. Individuals who are not employees under the common law rules may still be employees by statute under certain FICA, FUTA, and income tax withholding provisions. *See, e.g.,* § 3121(d) and the accompanying regulations.

Section 530 provides that a taxpayer will not be liable for federal employment taxes, with respect to an individual or class of workers, if certain statutory requirements are met.[3] Under section 530, the taxpayer, not the individual worker[4], is entitled to relief from the employment tax liability that would otherwise apply under subtitle C of the Code, and any related interest or penalties attributable to that employment tax liability. The taxes imposed by subtitle C include FICA taxes, RRTA taxes, FUTA taxes, and income tax withholding.

Section 530 relief applies only if the taxpayer did not treat the individual as an employee for federal employment tax purposes for the period at issue and meets each of the following requirements for such period: (1) the taxpayer filed[5] all required federal tax returns, including information returns, consistent with the taxpayer's treatment of the individual as not being an employee (reporting consistency requirement); (2) the taxpayer did not treat the individual or any individual holding a substantially similar position as an employee (substantive consistency requirement); and (3) the taxpayer had a reasonable basis for not treating the individual as an employee (reasonable basis requirement). A taxpayer will be treated as having a reasonable basis if the taxpayer's treatment was in reasonable reliance on any of the following:

(a) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer (judicial precedent);

(b) a past IRS audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding substantially similar positions (prior audit);

(c) long-standing recognized practice of a significant segment of the industry in which that individual was engaged (industry practice); or

(d) some other reasonable basis for not treating the individual as an employee.

Section 530 relief applies only to controversies involving the proper classification of individuals as employees or non-employees. Section 530 is not applicable when a taxpayer treated an individual as an employee and then paid additional compensation to the employee for the same services but failed to characterize the payment as wages. This includes situations where the taxpayer contends that the payment does not meet the definition of wages because the payment is a lease payment, bonus, reimbursement, severance payment, dividend, or other comparable characterization, but the payment is, in fact, paid solely for the individual's service as an employee.

Section 530(a)(1)(A) provides that a taxpayer is entitled to relief if the taxpayer "did not treat an *individual* as an *employee* for any period" for purposes of employment taxes (emphasis added). Legislative history demonstrates that section 530 applies exclusively to taxpayers involved in employment status controversies with the IRS. The legislative history explains that the relief measure was for taxpayers that were "involved in employment tax *status* controversies with the [IRS], and who potentially face large assessments, as a result of the [IRS's] proposed reclassifications of workers" and explains that the bill prevents the IRS from reclassifying as employees certain individuals whom the

[3] Section 530 (entitled "Controversies Involving Whether Individuals are Employees for Purposes of Employment Taxes") was originally enacted as a temporary measure to provide relief for taxpayers who were involved in employment status (worker classification) disputes with the IRS, and who faced large employment tax assessments as a result of the IRS's proposed reclassifications of workers. Section 530 was extended indefinitely by the Tax Equity and Fiscal Responsibility Act of 1982. Section 530 is not part of the Internal Revenue Code (Code).

[4] Section 530 relief does not extend to individual workers, who remain liable for their personal income taxes and the employee share of FICA taxes.

[5] In no event will a return filed after the date on which the IRS first contacts the taxpayer concerning an examination of the period to which the return relates be considered as filed on a basis consistent with good faith treatment by the taxpayer of an individual as a non-employee. Additionally, section 530 relief is not available for any year and for any worker for whom the taxpayer did not file the required returns.

taxpayer has previously treated as independent contractors. S. Rep. No. 95-1263, at 210 (1978).

In determining whether a taxpayer did not "treat" an individual as an employee within the meaning of section 530, Rev. Proc. 2025-10, 2025-4 IRB 492, modifying and superseding Rev. Proc. 85-18, 1985-1 CB 518, provides a list of guidelines used to determine whether there was "treatment" of an individual as an employee for a period within the meaning of section 530(a)(1). Among other actions, with respect to any individual, the following indicate "treatment" of the individual as an employee: the withholding of income tax or FICA taxes from any payments made; the filing of an original or amended employment tax return; the filing or issuance of a Form W-2; and the contracting with a third party to perform acts required of employers.

In enacting section 530, Congress looked to the taxpayer's treatment of the individual, not to the characterization of particular payments made to the individual. If an employer treated the individual as an employee, section 530 relief is not applicable to a dispute involving characterization of particular payments because the worker is not being reclassified from non-employee to employee status.[6] Thus, section 530 does not apply to controversies concerning whether a particular type of payment made to an employee constitutes "wages" as defined under the FICA, FUTA, or income tax withholding provisions, or whether particular services performed by an employee constitute "employment," as defined under the FICA, FUTA, or income tax withholding provisions.

If an employer failed to properly treat an individual as an employee, and the employer does not meet the statutory requirements for section 530 relief, the employer may be eligible for relief under § 3509 of the Code. Section 3509(a) allows an employer to remit unpaid taxes at reduced rates if an employer fails to deduct and withhold income tax or the employee share of FICA tax with respect to any of its employees because the employer treated that employee as a non-employee. Pursuant to § 3509(c), the reduced rates do not apply to the determination of the employer's liability for income tax withholding or the employee portion of FICA tax if such liability is due to the employer's intentional disregard of the requirement to deduct and withhold such taxes.

The concept of "treatment" of an individual as not being an employee in § 3509 is similar to "treatment" in section 530. The legislative history indicates that § 3509 of the Code was intended to provide relief for employers in cases in which a worker treated as a non-employee by the employer is reclassified by the IRS as an employee, and to deter employers from misclassifying employees to avoid employment taxes.[7]

Similar to section 530, if an employer treated an individual as an employee, § 3509 of the Code will not apply since the worker is not being reclassified from non-employee to employee.[8] Thus, § 3509 is not applicable when determining whether particular payments made to an employee are "wages" or whether particular services performed by an employee are "employment" as defined under the FICA, FUTA, or income tax withholding provisions.

Section 7436 of the Code provides that the Tax Court may review two types of employment tax determinations made by the IRS and the proper amount of employment tax, penalties, and additions to tax resulting from the determinations.

In order to obtain Tax Court review, the following elements must be present:

(1) an examination in connection with the audit of any person;

(2) a determination that –

(a) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or

(b) such person is not entitled to relief under section 530(a) with respect to such an individual;

(3) an "actual controversy" involving the determination as part of an examination; and

(4) the filing of an appropriate pleading in the Tax Court.

See American Airlines Inc. v. Commissioner, 144 T.C. 24, at 32 (2015). When the first three elements are met, the IRS will issue a § 7436 Notice. A taxpayer will satisfy the fourth element by filing a timely petition for review of the § 7436 Notice with the Tax Court. Revenue Procedure 2022-13, 2022-6 IRB 477, superseding Notice 2002-5, 2002-1 CB 320, provides guidance concerning when and how the IRS will issue a § 7436 Notice that will document the determination necessary to give the taxpayers the option to petition for Tax Court review. The IRS will not issue a § 7436 Notice if the taxpayer has agreed to the employment tax liabilities. Agreement is generally accomplished using Form 2504-T "Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436)."

HOLDINGS

Holding 1. Section 530 is applicable to this situation because the TP did not treat the individuals as employees, and the IRS is reclassifying the individuals as employees. Whether TP is entitled to section 530 relief depends on whether the TP satisfies the substantive consistency, reporting consistency, and reasonable basis requirements. If section 530 does not apply, § 3509 of the Code may be applicable because the TP treated the individuals as non-employees and did not

[6] In unusual cases, an individual may perform services for a taxpayer that are completely separate and distinct from the services giving rise to the employment relationship, and is separately compensated for those services. To be completely separate and distinct, there must be no interrelation either as to duties or remuneration in the two capacities. Compare Rev. Rul. 58-505, 1958-2 CB 728, with Rev. Rul. 2004-109, 2004-2 CB 958, and Rev. Rul. 2004-110, 2004-2 CB 960. In these circumstances, the status of the individual as an employee or non-employee, and the application of section 530, will be considered separately with respect to the distinct relationships under which the separate services are provided.

[7] See Staff of Joint Committee on Taxation, 97th Cong., General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (JCS-38-82), at 384-86 (Comm. Print 1982); H.R. Rep. No. 97-760, at 650-52 (1982) (Conf. Rep.); S. Rep. No. 97-494, Vol. 1, at 370-72 (1982).

[8] As stated in footnote 5, an individual may perform services for a taxpayer that are completely separate and distinct from the services giving rise to the employment relationship, and is separately compensated for those services. In these circumstances, the status of the individual as an employee or non-employee, and the application of § 3509, will be considered separately with respect to each of the distinct relationships under which the separate services are provided.

deduct and withhold federal employment taxes from the weekly fixed amounts and bonus amounts that it paid to the individuals, and the IRS is reclassifying the individuals as employees. Whether TP is entitled to § 3509 reduced rates depends on whether it meets the statutory requirements in § 3509. The IRS will issue TP a § 7436 Notice at the conclusion of the audit or after Appeals consideration if no agreement is reached. A § 7436 Notice will be issued because (1) there was an examination in connection with an audit, (2) there were determinations that (a) the individuals were employees of TP, and (b) TP was not entitled to relief under section 530 with respect to these individuals[9], and (3) the IRS and TP disagree on the employment status of the workers and whether the statutory requirements for section 530 relief have been met (there is an actual controversy involving the determination as part of the audit).

Holding 2. Section 530 is not applicable to this situation because the IRS is not reclassifying the individuals as employees. TP treated the individuals as employees for the services they performed and paid additional wages in the form of bonuses for the same services; there is no controversy over whether the individuals are employees or independent contractors with respect to their services.[10] The reduced rates under § 3509 of the Code are not applicable for the same reason. The IRS will issue TP a § 7436 Notice at the conclusion of the audit or after Appeals consideration if no agreement is reached. A § 7436 Notice will be issued because (1) there was an examination in connection with an audit, (2) a determination was made that TP was not entitled to relief under section 530 with respect to the bonuses paid to the individuals, and (3) the IRS and TP disagree on whether the statutory requirements for section 530 relief have been met (there is an actual controversy involving the determination as part of the audit).

Holding 3. Section 530 and § 3509 of the Code are not applicable to this situation for the same reasons stated in Holding 2. The IRS will issue TP a § 7436 Notice at the conclusion of the audit or after Appeals consideration if no agreement is reached. A § 7436 Notice will be issued because (1) there was an examination in connection with an audit, (2) a determination was made that TP was not entitled to relief under section 530 with respect to the bonuses paid to the individuals, and (3) the IRS and TP disagree on whether the statutory requirements for section 530 relief have been met (there is an actual controversy involving the determination as part of the audit).

Holding 4. Section 530 and § 3509 of the Code are not applicable to this situation for the same reasons stated in Holding 2. The IRS will not issue TP a § 7436 Notice at the conclusion of the audit or after Appeals consideration if no agreement is reached because TP did not claim that TP was entitled to relief under section 530 concerning the bonuses paid to the individuals, and there is no controversy over whether the individuals are employees or independent contractors.

Holding 5. Section 530 is not applicable to this situation because the IRS is not reclassifying the individuals as employees. The year-end bonus amounts are additional wages for the same services performed by the individuals who were treated as employees by TP. The reduced rates under § 3509 of the Code are not applicable for the same reason. The IRS will issue TP a § 7436 Notice at the conclusion of the audit or after Appeals consideration if no agreement is reached. A § 7436 Notice will be issued because (1) there was an examination in connection with an audit, (2) a determination was made that TP was not entitled to relief under section 530 with respect to the year-end bonus amounts paid to the individuals, and (3) the IRS and TP disagree on whether the statutory requirements for section 530 relief have been met (there is an actual controversy involving the determination as part of the audit).

DRAFTING INFORMATION

The principal author of this revenue ruling is Kelli Cacciotti of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). For further information regarding this revenue ruling, contact Ms. Cacciotti at (202) 317-6798 (not a toll-free number).

T.D. 10018

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 5, 301, and 602

Revising Consolidated Return Regulations and Controlled Group of Corporations Regulations to Reflect Statutory Changes, Modernize Language, and Enhance Clarity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that affect affiliated groups of corporations that file consolidated Federal income tax returns. These regulations modify the consolidated return regulations and the controlled group of corporations regulations to reflect statutory changes, update language to remove antiquated or regressive terminology, and enhance clarity. Additionally, this document withdraws certain temporary regulations.

DATES: *Effective date*: These final regulations are effective on December 30, 2024.

Applicability date: For dates of applicability, *see* §§1.52-1(i), 1.414(c)-6(g), 1.1502-0, 1.1502-5(e), 1.1502-45(f), 1.1552-1(g), 1.1562-1(e), 1.1563-2(d), and 1.1563-3(e).

[9] If the IRS were to make only one of these determinations, a § 7436 Notice would still be issued.

[10] Compare SECC Corp. v. Commissioner, 142 T.C. 225, 235 (2014) (dispute over "whether petitioner's workers can serve in a dual capacity").

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under section 52, Christopher Dellana of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-5500; concerning the regulations under section 414, Jessica Weinberger of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-4148; concerning the regulations under all other sections, William W. Burhop or Kelton P. Frye of the Office of Associate Chief Counsel (Corporate) at (202) 317-5363 or (202) 317-6975, respectively (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

Section 1502 of the Internal Revenue Code (Code) authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe consolidated return regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to clearly reflect the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. *See* §1.1502-1(h) (defining the term "consolidated group"). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code (chapter 1) that would apply if the corporations composing the consolidated group filed separate returns. Additionally, section 7805(a) of the Code authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

I. *Overview*

This Treasury decision contains final regulations under sections 52, 414, 1502, 1503, 1552, and 1563 of Code. These regulations primarily revise the Income Tax Regulations (26 CFR part 1) issued under section 1502 (consolidated return regulations). Terms used in the consolidated return regulations generally are defined in §1.1502-1.

II. *2023 Proposed Regulations*

On August 7, 2023, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-134420-10) in the ***Federal Register*** (88 FR 52057) under sections 1502, 1503, 1552, and 1563 (2023 proposed regulations). The 2023 proposed regulations would revise the consolidated return regulations (i) to eliminate obsolete or otherwise outdated provisions, (ii) to modernize the language and improve the clarity of the regulations, and (iii) to facilitate taxpayer compliance.

The 2023 proposed regulations also would revise the consolidated return regulations and the regulations under section 1563 to eliminate antiquated or regressive terminology. For example, the 2023 proposed regulations (i) would replace gender-specific pronouns and other identifiers with gender-neutral pronouns and identifiers, and (ii) would identify (A) American Samoa, (B) the Commonwealth of the Northern Mariana Islands, (C) the Commonwealth of Puerto Rico, (D) Guam, and (E) the U.S. Virgin Islands as "territories" of the United States rather than "possessions" in §§1.1502-4(d)(1) and 1.1503(d)-1(b)(7). These revisions are consistent with, and in furtherance of, the Treasury Department's Equity Action Plan, as well as Executive Order 13985 of January 20, 2021, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 FR 7009 (January 25, 2021).

The 2023 proposed regulations also would revise or remove other regulations under the Code. These regulations are set forth in (i) the Income Tax Regulations (26 CFR part 1), (ii) the Temporary Income Tax Regulations under the Revenue Act of 1978 (26 CFR part 5), (iii) the Regulations on Procedure and Administration (26 CFR part 301), and (iv) the OMB Control Numbers under the Paperwork Reduction Act Regulations (26 CFR part 602).

The notice of proposed rulemaking (NPRM) containing the 2023 proposed regulations also withdrew or partially withdrew numerous earlier NPRMs, including: (i) NPRMs that previously had been incorporated into final regulations in revised form or that were incorporated into the 2023 proposed regulations in revised form; (ii) an NPRM that became obsolete when proposed regulations provided in a subsequent, discrete NPRM were adopted as final regulations; and (iii) NPRMs that cross-referenced temporary regulations (the text of which served as the text for those proposals) that were removed, have expired, or otherwise have become obsolete. Additionally, the 2023 proposed regulations proposed to withdraw temporary regulations that (i) no longer have practical applicability to taxpayers, or (ii) would be replaced by final regulations provided by this Treasury decision.

Finally, the 2023 proposed regulations would remove numerous provisions that cross-reference prior-law editions of the Code of Federal Regulations (CFR).

III. *Correction to 2023 Proposed Regulations*

The 2023 proposed regulations contained amendments to the regulations under section 1563. A correction to the 2023 proposed regulations was published in the ***Federal Register*** (88 FR 84770-02) on December 6, 2023, and provided an additional opportunity for public comment (2023 correction), to make parallel amendments to similar regulations under sections 52 and 414 to avoid creating inconsistencies.

IV. *Comments Received*

The Treasury Department and the IRS requested comments on the 2023 proposed regulations. The comments received are described in further detail in the Summary of Comments and Explanation of Revisions. No public hearing was requested or held.

Summary of Comments and Explanation of Revisions

I. *Withdrawal of Proposed or Temporary Regulations*

A commenter expressed concern that the withdrawal or partial withdrawal of old proposed or temporary regulations in the 2023 proposed regulations could lead to confusion or uncertainty for consolidated groups if the withdrawn regulations contain substantive provisions on which consolidated groups continue to rely. The commenter recommended either retaining or revising the withdrawn proposed or temporary regulations or providing guidance on how to apply the existing final regulations in light of the withdrawals.

The Treasury Department and the IRS are of the view that, with the exception of the proposed consolidated return regulations under §1.1502-80(d) relating to the non-applicability of section 357(c) discussed in part VII of this Summary of Comments and Explanation of Revisions, the withdrawn or partially withdrawn regulations do not contain substantive provisions on which taxpayers continue to rely. Accordingly, these final regulations do not adopt the commenter's recommendation.

II. *Section 1.1502-5 (Consolidated Estimated Tax)*

Section 10101 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022, amended section 55 of the Code to impose a new corporate alternative minimum tax (commonly referred to as the corporate alternative minimum tax, or CAMT) based on adjusted financial statement income. To reflect this change, the 2023 proposed regulations would modify the definition of the term "tax" in §1.1502-5(b)(5) by adding a reference to section 55(a). Because the amount of tax imposed under section 55 is determined in part by reference to the amount of tax imposed under section 59A of the Code (that is, the base erosion anti-abuse tax, or BEAT), the 2023 proposed regulations also would modify the definition of the term "tax" in §1.1502-5(b)(5) by adding a reference to section 59A.

A commenter recommended adding the foregoing references not only in §1.1502-5(b)(5), but also in other sections of the consolidated return regulations that use the word "tax". However, these changes in the 2023 proposed regulations were necessary to implement the recently enacted CAMT. The Treasury Department and the IRS have determined that similar changes to other provisions in the consolidated return regulations are beyond the scope of this guidance. Accordingly, these final regulations do not adopt the commenter's recommendation.

III. *Revisions to Remove Obsolete or Outdated References or Terms*

As noted in part II of the Background, the 2023 proposed regulations would make nonsubstantive changes to the consolidated return regulations and the regulations under section 1563 to replace gender-specific pronouns and other identifiers with gender-neutral pronouns and identifiers, and to replace the term "possession" with the defined term "U.S. territory" in §§1.1502-4(d)(1) and 1.1503(d)-1(b)(7). A commenter welcomed the removal of gender-specific pronouns and identifiers but suggested that the gender-neutral pronouns and identifiers are not entirely clear or consistent throughout the consolidated return regulations (for example, some provisions use "its" as a singular possessive pronoun, whereas others use "their" as a singular possessive pronoun). The commenter recommending either using a consistent set of gender-neutral pronouns and identifiers throughout the regulations or providing a glossary or explanation of these pronouns and identifiers.

The Treasury Department and the IRS have determined that revising all gender-neutral pronouns throughout the consolidated return regulations and the section 1563 regulations is beyond the scope of this guidance. However, the Treasury Department and the IRS will continue to consider the revision of particular pronouns when modifying the consolidated return regulations in future guidance.

The commenter also requested clarification that the replacement of the term "possessions" with the term "territories" is purely terminological and is not intended to affect the tax treatment of these jurisdictions under the consolidated return regulations. The Treasury Department and the IRS agree with the commenter that this change was intended to be purely terminological. *See* https://www.doi.gov/oia/islands/politicatypes.

IV. *Revisions to §§1.1502-13, 1.1502-32, and 1.1502-36*

A commenter raised questions about amendments to §§1.1502-13(c)(2)(ii) and (c)(6)(ii)(A), 1.1502-32(b)(2)(iv) and (b)(4)(i), and 1.1502-36(d)(3)(ii)(B) and (d)(6)(ii)(B) in the 2023 proposed regulations. However, neither the 2023 proposed regulations nor these final regulations would amend these provisions. Accordingly, no revisions have been made in response to this comment.

V. *Definition of "Consolidated Return Regulations"*

The 2023 proposed regulations would add "consolidated return regulations" as a new defined term in §1.1502-1. As defined in proposed §1.1502-1(g), this term would mean the regulations issued under section 1502. A commenter noted that certain consolidated return regulations issued under the authority of section 1502 were not actually placed under section 1502 (for example, *see* §1.163(j)-4 and §1.385-4). Accordingly, these final regulations revise the term "consolidated return regulations" to mean the regulations issued under the authority of section 1502. These final regulations also amend §§1.1502-47(a)(3), (k), and (l) and 1.1504-3(d)(1)(ii) to replace the cited range of sections with the defined term "consolidated return regulations."

VI. *Sections 52 and 414*

Sections 52(a) and 414(b) provide rules for controlled groups of corporations that incorporate the definitions and rules in section 1563(a), with modifications. Sections 52(b) and 414(c)(1) authorize regulations applying principles similar to the principles that apply in the case of sections 52(a) and 414(b), respectively, to trades or businesses under common control.

A controlled group of corporations under section 52(a) or section 414(b), which cross-reference section 1563(a), is determined based on the constructive ownership rules of section 1563(e), including section 1563(e)(2) and (3) (but not section 1563(e)(3)(C)). A group of trades or businesses under common control under sections 52(b) and 414(c) is determined by taking into account the constructive ownership rules in §§1.52-1(b) and (c) and 1.414(c)-2(b)(1), respectively, that mirror the rules under section 1563.

As discussed in the preamble to the 2023 proposed regulations, the 2023 proposed regulations would revise §1.1563-1(a)(2)(i)(A) and (B) to reflect an amendment to section 1563(d)(1)(B) by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342 (November 10, 1988). That amendment expanded the constructive ownership rules of section 1563(e) that apply for purposes of section 1563(d)(1) to include section 1563(e)(2) (relating to attribution from partnerships) and section 1563(e)(3) (relating to attribution from estates or trusts). The 2023 proposed regulations generally would apply to consolidated return years for which the due date of the return (without regard to extensions) is after the date of publication of the Treasury Decision adopting the regulations as final regulations in the ***Federal Register***.

The 2023 correction does not specify an applicability date for the proposed revisions to §§1.52-1(c)(1) and 1.414(c)-2(b)(1). In addition, the Treasury Department and the IRS are of the view that applying the general applicability date in the 2023 proposed regulations to the proposed revisions to §§1.52-1(c)(1) and 1.414(c)-2(b)(1) may cause confusion, because the rules in §§1.52-1(c)(1) and 1.414(c)-2(b)(1) apply to taxpayers who may not file consolidated returns.

Accordingly, these final regulations clarify that the amendment to §1.52-1(c)(1) applies to taxable years beginning on or after January 1, 2025, and that the amendment to §1.414(c)-2(b)(1) applies to plan years beginning on or after January 1, 2025. The final regulations add new paragraph (i) to §52-1 to provide that §52-1, as amended by this Treasury decision, applies to taxable years beginning on or after January 1, 2025. Section 1.414(c)-6, which provides the effective date and various applicability dates for the regulations under sections 414(b) and (c), is amended to reflect the applicability date of the amendment to §1.414(c)-2(b)(1); *see also* the Applicability Date section of this preamble. The amendment to section 1563(d)(1)(B) by the Technical and Miscellaneous Revenue Act of 1988 was not incorporated into the regulations under sections 52(b) and 414(c)(1) with respect to taxable years and plan years, respectively, that began prior to the applicability date for the regulations specified in this Treasury decision. Accordingly, the IRS will not challenge the application of §§1.52-1(c)(1) and 1.414(c)-2(b) as previously in effect or taking into account the amendment to section 1563(d)(1)(B) with respect to taxable years that began prior to January 1, 2025, for the regulations under section 52(b) or plan years that began prior to January 1, 2025, for the regulations under section 414(c)(1).

VII. *Section 357(c) and §1.1502-80(d)*

A commenter raised concerns about the withdrawal of proposed consolidated return regulations under §1.1502-80(d) relating to the non-applicability of section 357(c). The comment has led the Treasury Department and the IRS to reconsider that withdrawal. For a discussion of the comment, *see* the notice of proposed rulemaking published in the Proposed Rules section of this issue of the ***Federal Register***.

VIII. *Other Non-Substantive Revisions*

To make the reading of these regulations more user-friendly, these final regulations generally restate the revised paragraphs in the regulations under sections 52, 414, 1502, 1503, 1552, and 1563. Additionally, the formatting changes to the examples in §1.1502-13(j) in the 2023 proposed regulations were adopted by T.D. 10016, published in the ***Federal Register*** on December 11, 2024 (89 FR 100138).

Applicability Date

Pursuant to section 1503(a) of the Code, the regulations issued under the authority of section 1502 apply to consolidated return years for which the due date of the return (without regard to extensions) is after December 30, 2024.

In addition, §1.52-1(c)(1) applies to taxable years beginning on or after January 1, 2025, and §1.414(c)-2(b)(1) applies to plan years beginning on or after January 1, 2025. The amendments to §§1.1552-1(g), 1.1562-1(e), 1.1563-2(d), and 1.1563-3(e) apply to taxable years beginning after December 30, 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*

These final regulations update the consolidated return regulations by revising and removing outdated and obsolete provisions, such as cross-references to temporary regulations, regulations, and statutes that have been repealed, removed, expired, renumbered, or otherwise have become obsolete. Therefore, these final regulations would not impose an additional reporting burden beyond what is otherwise required by existing statutes, regulations, and forms. The total burden associated with these final regulations is $0.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations would apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts reported on all Forms 1120. Therefore, these final regulations would not create significant additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, the Secretary certifies that these final regulations will not have significant economic impact on a significant number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final 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. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. [In 2024, that threshold is approximately $190 million.] These final regulations do not include any rule that would 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 propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

VI. *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 authors of this document are Kelton P. Frye and William W. Burhop of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§1.1503-2, 1.1502-9A, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, 1.1502-79A, 1.1502-91A, 1.1502-92A, 1.1502-93A, 1.1502-94A, 1.1502-95A, 1.1502-96A, 1.1502-98A, and 1.1502-99A to read in part as follows:

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

Par. 2. Section 1.52-1 is amended by revising paragraphs (c)(1)(i) and (ii) and adding paragraph (i) to read as follows:

§1.52-1 Trades or businesses that are under common control.

* * * * *

(c) * * *

(1) * * *

(i) A controlling interest in each of the organizations, except the common parent organization, is owned (directly and with the application of §1.414(c)-4(b)(1), (2), and (3)) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of §1.414(c)-4(b)(1), (2), and (3)) a controlling interest in at least one of the other organizations, excluding, in computing the controlling interest, any direct ownership interest by the other organizations.

* * * * *

(i) *Applicability date*. This section applies to taxable years beginning on or after January 1, 2025. *See* 26 CFR 1.52-1, as revised April 1, 2024, for taxable years beginning before January 1, 2025.

Par. 3. Section 1.57-1 is amended by revising paragraph (b)(4)(ii) to read as follows:

§1.57-1 Items of tax preference defined.

* * * * *

(b) * * *

(4) * * *

(ii) Where the taxpayer acquires property in a transaction to which section 381(a) applies or from another member of an affiliated group during a consolidated return year and an "accelerated" method of depreciation as described in section 167(b)(2), (3), or (4) or section 167(j)(1)(B) or (C) is permitted (*see* §1.381(c)(6)-1), the depreciation which would have been allowable under the straight line method is determined as if the property had been depreciated under the straight line method since depreciation was first taken on the property by the transferor of such property. In such cases, references in this paragraph to the period for which the property is held or useful life of the property are treated as including the period beginning with the commencement of the original use of the property.

* * * * *

Par. 4. Section 1.167(c)-1 is amended by revising paragraph (a)(5) to read as follows:

§1.167(c)-1 Limitations on methods of computing depreciation under section 167(b)(2), (3), and (4).

(a) * * *

(5) *See* §§1.1502-13 and 1.1502-68 for provisions dealing with depreciation of property received by a member of an affiliated group from another member of the group during a consolidated return period.

* * * * *

Par. 5. Section 1.279-6 is amended by revising and republishing paragraph (d) to read as follows:

§1.279-6 Application of section 279 to certain affiliated groups.

* * * * *

(d) *Aggregate projected earnings*. In the case of an affiliated group of corporations (whether or not such group files a consolidated return under section 1501), the aggregate projected earnings of such group is computed by separately determining the projected earnings of each member of such group under paragraph (d) of §1.279-5, and then adding together such separately determined amounts, except that—

(1) A dividend (a distribution which is described in section 301(c)(1) other than a distribution described in section 243(c)(1)) distributed by one member to another member is eliminated;

(2) In determining the earnings and profits of any member of an affiliated group, there is eliminated any amount of interest income received or accrued, and of interest expense paid or incurred, which is attributable to intercompany indebtedness; and

(3) No gain or loss is recognized in any transaction between members of the affiliated group.

* * * * *

§1.382-8 [Amended]

Par. 6. Section 1.382-8 is amended by removing and reserving paragraph (i).

Par. 7. Section 1.414(c)-2 is amended by revising paragraphs (b)(1)(i) and (ii) to read as follows:

§1.414(c)-2 Two or more trades or businesses under common control.

* * * * *

(b) * * *

(1) * * *

(i) A controlling interest in each of the organizations, except the common parent organization, is owned (directly and with the application of §1.414(c)-4(b)(1), (2), and (3)) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of §1.414(c)-4(b)(1), (2), and (3)) a controlling interest in at least one of the other organizations, excluding, in computing such controlling interest, any direct ownership interest by such other organizations.

* * * * *

Par. 8. Section 1.414(c)-6 is amended by revising and republishing paragraph (a) and adding paragraph (g) to read as follows:

§1.414(c)-6 Effective date.

(a) *General rule*. Except as provided in paragraph (b), (c), (e), (f), or (g) of this section, the provisions of §1.414(b)-1 and §§1.414(c)-1 through 1.414(c)-4 apply for plan years beginning after September 2, 1974.

* * * * *

(g) *Special rule*. Notwithstanding paragraph (a), (b), or (c) of this section, §1.414(c)-2(b)(1) applies to plan years beginning on or after January 1, 2025.

Par. 9. Section 1.1502-0 is revised to read as follows:

§1.1502-0 Effective/applicability dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the consolidated return regulations (as defined in §1.1502-1(g)) are applicable to taxable years beginning after December 31, 1965.

(b) *Exceptions.* The applicability date described in paragraph (a) of this section does not apply to any provision of the consolidated return regulations with an applicability or effective date different than the date provided by paragraph (a) of this section.

Par. 10. Section 1.1502-1 is amended by:

a. Adding introductory text;

b. Revising and republishing paragraphs (f)(2) and (3) and (g);

c. Redesignating paragraph (l) as paragraph (m); and

d. Adding a new paragraph (l).

The additions and revisions read as follows:

§1.1502-1 Definitions.

For purposes of the consolidated return regulations (and any provision of this chapter that refers to the consolidated return regulations):

* * * * *

(f) * * *

(2) *Exceptions*. The term *separate return limitation year* (or SRLY) does not include:

(i) A separate return year of the corporation which is the common parent for the consolidated return year to which the tax attribute is to be carried (except as provided in §1.1502-75(d)(2)(ii) and paragraph (f)(3) of this section);

(ii) A separate return year of any corporation which was a member of the group for each day of such year; or

(iii) A separate return year of a predecessor of any member if such predecessor was a member of the group for each day of such year.

(3) *Reverse acquisitions*. In the event of an acquisition to which §1.1502-75(d)(3) applies, all taxable years of the first corporation and of each of its subsidiaries ending on or before the date of the acquisition are treated as separate return limitation years, and the separate return years (if any) of the second corporation and each of its subsidiaries are not treated as separate return limitation years (unless they were so treated immediately before the acquisition). For example, if corporation P merges into corporation T, and the persons who were stockholders of P immediately before the merger, as a result of owning the stock of P, own more than 50 percent of the fair market value of the outstanding stock of T, then a loss incurred before the merger by T (even though it is the common parent), or by a subsidiary of T, is treated as having been incurred in a separate return limitation year. Conversely, a loss incurred before the merger by P, or by a subsidiary of P in a separate return year during all of which such subsidiary was a member of the group of which P was the common parent, is treated as having been

incurred in a year which is not a separate return limitation year.

* * * * *

(g) *Consolidated return regulations*. The term *consolidated return regulations* means the regulations issued under the authority of section 1502.

* * * * *

(l) *U.S. territory.* The *term U.S. territory* means—

(1) American Samoa;

(2) The Commonwealth of the Northern Mariana Islands;

(3) The Commonwealth of Puerto Rico;

(4) Guam; and

(5) The U.S. Virgin Islands.

* * * * *

§1.1502-3 [Amended]

Par. 11. Section 1.1502-3 is amended by removing and reserving paragraph (e).

Par. 12. Section 1.1502-4 is amended by revising paragraph (d)(1) to read as follows:

§1.1502-4 Consolidated foreign tax credit.

* * * * *

(d) * * *

(1) *Allowance of unused foreign tax as consolidated carryover or carryback*. The consolidated group's carryovers and carrybacks of unused foreign tax (as defined in §1.904-2(c)(1)) to the taxable year is determined on a consolidated basis under the principles of section 904(c) and §1.904-2 and is deemed to be paid or accrued to a foreign country or U.S. territory (as defined in §1.1502-1(l)) for that year. The consolidated group's unused foreign tax carryovers and carrybacks to the taxable year consist of any unused foreign tax of the consolidated group, plus any unused foreign tax of members for separate return years, which may be carried over or back to the taxable year under the principles of section 904(c) and §1.904-2. The consolidated group's unused foreign tax carryovers and carrybacks do not include any unused foreign taxes apportioned to a corporation for a separate return year pursuant to §1.1502-79(d). A consolidated group's unused foreign tax in each separate category is the excess of the foreign taxes paid, accrued or deemed paid under section 960 by the consolidated group over the limitation in the applicable separate category for the consolidated return year. *See* paragraph (c) of this section.

* * * * *

Par. 13. Section 1.1502-5 is revised to read as follows:

§1.1502-5 Estimated tax.

(a) *General rule*—(1) *Consolidated estimated tax*. If a group files a consolidated return for two consecutive taxable years, it must make payments of estimated tax on a consolidated basis for each subsequent taxable year until separate returns are filed. When filing on a consolidated basis, the group is generally treated as a single corporation for purposes of section 6655 (relating to payment of estimated tax by corporations). If separate returns are filed by the members for a taxable year, the amount of any estimated tax payments made with respect to a consolidated estimated tax for the year is credited against the separate tax liabilities of the members in any reasonable manner designated by the common parent.

(2) *First two consolidated return years.* For its first two consolidated return years, a group may make payments of estimated tax on either a consolidated or a separate member basis. The amount of any separate estimated tax payments is credited against the consolidated tax liability of the group.

(b) *Addition to tax for failure to pay estimated tax under section 6655*—(1) *Consolidated return filed.* For its first two consolidated return years, a group may compute the amount of the penalty (if any) under section 6655 on a consolidated basis or a separate member basis, regardless of the method of payment. Thereafter, the group must compute the penalty for any consolidated return year on a consolidated basis.

(2) *Computation of penalty on consolidated basis*—(i) *In general.* This paragraph (b)(2) provides rules for computing the penalty under section 6655 on a consolidated basis.

(ii) *Preceding taxable year.* The tax shown on the return for the preceding taxable year referred to in section 6655(d)(1)(B)(ii) is, if a consolidated return was filed for that preceding year, the tax shown on the consolidated return for that preceding year or, if a consolidated return was not filed for that preceding year, the aggregate of the taxes shown on the separate returns of the common parent and any other corporation that was a member of the same affiliated group as the common parent for that preceding year.

(iii) *Aggregate of payments made by all members.* If estimated tax was not paid on a consolidated basis, the amount of the group's payments of estimated tax for the taxable year is the aggregate of the payments made by all members for the year.

(iv) *Required annual payment rule.* If the common parent is otherwise eligible to use the section 6655(d)(1)(B)(ii) required annual payment rule, that rule applies only if the group's consolidated return, or each member's separate return if the group did not file a consolidated return, for the preceding taxable year was a taxable year of 12 months.

(3) *Computation of penalty on separate member basis.* To compute any penalty under section 6655 on a separate member basis, for purposes of section 6655(d)(1)(B)(i), the "tax shown on the return" for the taxable year is the portion of the tax shown on the consolidated return allocable to the member under paragraph (b)(6) of this section. If the member was included in the consolidated return filed by the group for the preceding taxable year, for purposes of section 6655(d)(1)(B)(ii), the "tax shown on the return" for the preceding taxable year for any member is the portion of the tax shown on the consolidated return for the preceding year allocable to the member under paragraph (b)(6) of this section.

(4) *Consolidated payments if separate returns filed.* If the group does not file a consolidated return for the taxable year but makes payments of estimated tax on a consolidated basis, for purposes of section 6655(b)(1)(B), the "amount (if any) of the installment paid" by any member is an amount apportioned to the member in any reasonable manner designated by the common parent. If a member was included in the consolidated return filed by the group for the preceding taxable year, the amount of the member's penalty under section 6655 is computed on the separate member

basis described in paragraph (b)(3) of this section.

(5) *Tax defined.* For purposes of this section, the term *tax* means the excess of—

(i) The sum of—

(A) The consolidated tax imposed by section 11 or subchapter L of chapter 1, whichever applies;

(B) The tax imposed by section 55(a); plus

(C) The tax imposed by section 59A; over

(ii) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(6) *Allocation of consolidated tax liability for determining earnings and profits.* For purposes of this section, the tax shown on a consolidated return is allocated to the members of the group by allocating any tax described in paragraph (b)(5)(i) of this section, net of allowable credits under paragraph (b)(5)(ii) of this section, under the method that the group has elected pursuant to section 1552 and §1.1502-33(d).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

(1) *Example 1.* Corporations P and S1 file a consolidated return for the first time for calendar year 2021. P and S1 also file consolidated returns for calendar year 2022 and calendar year 2023. Under paragraph (a)(2) of this section, for the 2021 and 2022 taxable years, P and S1 may pay estimated tax on either a separate or consolidated basis. Under paragraph (a)(1) of this section, for the 2023 taxable year, the group must pay its estimated tax on a consolidated basis. In determining whether P and S1 come within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the tax shown on the consolidated return for the 2022 taxable year.

(2) *Example 2.* Corporations P, S1, and S2 file a consolidated return for the first time for calendar year 2021 and file their second consolidated return for calendar year 2022. S2 ceases to be a member of the group on September 15, 2023. Under paragraph (b)(2) of this section, in determining whether the group (which no longer includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the tax shown on the consolidated return for calendar year 2022.

(3) *Example 3.* Corporations P and S1 file a consolidated return for the first time for calendar year 2021 and file their second consolidated return for calendar year 2022. Corporation S2 becomes a member of the group on July 1, 2023, and joins in the filing of the consolidated return for calendar year 2023. Under paragraph (b)(2) of this section, in determining whether the group (which now includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the tax shown on the consolidated return for calendar year 2022. Any tax of S2 for any separate return year is not included as a part of the "tax shown on the return" for purposes of applying section 6655(d)(1)(B)(ii).

(4) *Example 4.* Corporations X and Y file consolidated returns for the calendar years 2021 and 2022 and separate returns for calendar year 2023. Under paragraph (b)(3) of this section, in determining whether X or Y comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the amount of tax shown on the consolidated return for 2022 allocable to X and to Y in accordance with paragraph (b)(6) of this section.

(d) *Cross-references*—(1) For provisions relating to quick refunds of corporate estimated tax payments, *see* §§1.1502-78 and 1.6425-1 through 1.6425-3.

(2) For provisions relating to depositing estimated taxes, *see* §1.6302-1(b).

(e) *Applicability date.* This section applies to any taxable year for which the due date of the income tax return (without regard to extensions) is after December 30, 2024. For prior years, *see* §1.1502-5 (as contained in the 26 CFR edition revised as of April 1, 2024).

Par. 14. Section 1.1502-6 is amended by revising paragraph (b) to read as follows:

§1.1502-6 Liability for tax.

* * * * *

(b) *Liability of subsidiary after withdrawal*. If a subsidiary has ceased to be a member of the group and in such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Commissioner may, if the Commissioner believes that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former subsidiary in an amount not exceeding the portion of such deficiency which the Commissioner may determine to be allocable to it. If the Commissioner makes assessment and collection of any part of a deficiency from such former subsidiary, then for purposes of any credit or refund of the amount collected from such former subsidiary the agency of the common parent under the provisions of §1.1502-77 does not apply.

* * * * *

Par. 15. Section 1.1502-9 is amended by revising and republishing paragraphs (a), (b)(1), and (c)(2)(ii) and (iii) to read as follows:

§1.1502-9 Consolidated overall foreign losses, separate limitation losses, and overall domestic losses.

(a) *In general*. This section provides rules for applying section 904(f) and (g) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. Under section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) or §1.904-5(a)(4)(v) (separate category). Section 904(g) concerns rules relating to overall domestic losses (ODLs) and the consequences of such losses. Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs, SLLs, and ODLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) * * *

(1) *Computation of CSLI or CSLL and consolidated U.S.-source taxable income or CDL*. The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each separate category under the principles of §1.1502-11 by aggregating each member's foreign-source taxable income or loss in such separate category computed under the principles of §1.1502-12, and taking into account the foreign portion of the consolidated items described in §1.1502-11(a)(2) through (a)(6) for such separate category. The group computes its consolidated U.S.-source taxable income or consolidated domestic loss (CDL) under similar principles.

* * * * *

(c) * * *

(2) * * *

(ii) *Departing member's portion of group's account*. A departing member's portion of a group's COFL, CSLL or

CODL account for a loss category is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§1.861-9T(g)(3), 1.861-12, and 1.861-13, the group identifies the assets of the departing member and the remaining members that generate U.S.-source income (domestic assets) and foreign-source income (foreign assets) in each separate category. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL account for a loss category is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss category and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss category. The member's portion of a group's CODL account for each income category is the group's CODL account multiplied by a fraction, the numerator of which is the value of the member's domestic assets and the denominator of which is the value of the domestic assets of the group (including the departing member). The value of the domestic and foreign assets is determined under the asset valuation rules of §1.861-9(g)(1) and (2) using either tax book value or alternative tax book value under the method chosen by the group for purposes of interest apportionment as provided in §1.861-9(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), §1.861-9T(g)(2)(iv) (assets in intercompany transactions) applies, but §1.861-9T(g)(2)(iii) (adjustments for directly allocated interest) does not apply. The member's portions of COFL, CSLL, and CODL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions is determined without regard to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in §1.861-9(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion.* If the aggregate of a member's portions of COFL and CSLL accounts for a loss category (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss category, the member's portion of the COFL or CSLL accounts for the loss category is reduced (proportionately, in the case of multiple accounts) by such excess. In addition, if the aggregate of a member's portions of CODL accounts (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's domestic assets, the member's portion of the CODL accounts is reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply in the case of COFL or CSLL accounts if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss category. In the case of CODL accounts, this rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the domestic assets.

* * * * *

Par. 16. Section 1.1502-11 is amended by:

1. Revising and republishing paragraph (a).

2. In paragraph (b)(2)(iii), redesignating *Examples 1* through *3* as paragraphs (b)(2)(iii)(A) through (C), respectively.

3. In newly redesignated paragraphs (b)(2)(iii)(A) through (C), further redesignating the paragraphs in the first column as the paragraphs in the second column:

Old Paragraphs	New Paragraphs
(b)(2)(iii)(A)(a), (b), and (c)………………………..	(b)(2)(iii)(A)(*1*), (*2*), and (*3*)
(b)(2)(iii)(B)(a), (b), (c), and (d)……………………	(b)(2)(iii)(B)(*1*), (*2*), (*3*), and (*4*)
(b)(2)(iii)(C)(a), (b), (c), (d), and (e)………………	(b)(2)(iii)(C)(*1*), (*2*), (*3*), (*4*), and (*5*),

4. Revising newly redesignated paragraphs (b)(2)(iii)(A)(*3*) and (b)(2)(iii)(B)(*4*).

5. Revising and republishing paragraph (c)(7).

The revisions read as follows:

§1.1502-11 Consolidated taxable income.

(a) *In general.* The consolidated taxable income (CTI) for a consolidated return year is determined by taking into account:

(1) The separate taxable income of each member of the group (*see* §1.1502-12 for the computation of separate taxable income);

(2) Any consolidated net operating loss (CNOL) deduction (*see* §1.1502-21 for the computation of the CNOL deduction);

(3) Any consolidated capital gain net income (*see* §1.1502-22 for the computation of consolidated capital gain net income);

(4) Any consolidated section 1231 net loss (*see* §1.1502-23 for the computation of consolidated section 1231 net loss);

(5) Any consolidated charitable contributions deduction (*see* §1.1502-24 for the computation of the consolidated charitable contributions deduction); and

(6) Any consolidated dividends received deduction (*see* §1.1502-26 for

the computation of the consolidated dividends received deduction).

(b) * * *

(2) * * *

(iii) * * *

(A) * * *

(*3*) Because $30 of S's loss is absorbed in the determination of consolidated taxable income under paragraph (b)(2)(ii) of this section, P's basis in S's stock is reduced under §1.1502-32(b) from $500 to $470 immediately before the disposition. Consequently, P recognizes a $50 gain from the sale of S's stock and the group has consolidated taxable income of $50 for Year 1 (P's $30 of ordinary income and $50 gain from the sale of S's stock, less the $30 of S's loss). In addition, S's limited loss of $50 is treated as a separate net operating loss attributable to S and, because S ceases to be a member, the loss is apportioned to S under §1.1502-21 and carried to its first separate return year.

(B) * * *

(*4*) Under paragraph (b)(2)(ii) of this section, S's $40 ordinary loss from Year 2 that is limited under this paragraph (b) is treated as a separate net operating loss arising in Year 2. Similarly, $40 of the consolidated net capital loss from Year 1 attributable to S is treated as a separate net capital loss carried over from Year 1. Because S ceases to be a member, the $40 net operating loss from Year 2 and the $40 consolidated net capital loss from Year 1 are allocated to S under §§1.1502-21 and 1.1502-22, respectively and are carried to S's first separate return year.

* * * * *

(c) * * *

(7) *Effective date*. This paragraph (c) applies to dispositions of subsidiary stock that occur after March 22, 2005.

* * * * *

Par. 17. Section 1.1502-12 is amended by:

a. Revising paragraph (b);

b. Removing and reserving paragraphs (e), (g), and (m);

c. Revising paragraph (n); and

d. Removing and reserving paragraph (q).

The revisions read as follows:

§1.1502-12 Separate taxable income.

* * * * *

(b) Any deduction that is disallowed under §1.1502-15 must be taken into account as provided in that section.

* * * * *

(n) No deduction under section 243(a)(1) or section 245 (relating to deductions with respect to dividends received) is taken into account;

* * * * *

Par. 18. Section 1.1502-13 is amended by:

a. Revising and republishing paragraphs (a)(3)(i), (a)(6)(ii), (c)(4)(i)(B), (c)(5), (d)(3), (e)(1)(v), (f)(5)(ii)(B)(*2*), (f)(5)(ii)(F), (f)(6)(ii) and (v), (f)(7), and (g)(7)(ii).b. Redesignating paragraphs (h)(2)(v)(a) and (b) as paragraphs (h)(2)(v)(A) and (B).

c. Revising paragraph (l)(6).

d. Adding paragraphs (l)(8) through (10).

e. Removing paragraph (m).

The revisions and additions read as follows:

§1.1502-13 Intercompany transactions.

(a) * * *

(3) * * *

(i) *In general*. The timing rules of this section are a method of accounting for intercompany transactions, to be applied by each member in addition to the member's other methods of accounting. *See* §§1.1502-17 and 1.446-1(c)(2)(iii). To the extent the timing rules of this section are inconsistent with a member's otherwise applicable methods of accounting, the timing rules of this section control. For example, if S sells property to B in exchange for B's note, the timing rules of this section apply instead of the installment sale rules of section 453. S's or B's application of the timing rules of this section to an intercompany transaction clearly reflects income only if the effect of that transaction as a whole (including, for example, related costs and expenses) on consolidated taxable income is clearly reflected.

* * * * *

(6) * * *

(ii) *Table of examples*. This section contains the following examples:

Rule	General Location	Paragraph	Example
(A) Matching rule.	§1.1502-13(c)(7)(ii)	(A)	Example 1. Intercompany sale of land followed by sale to a nonmember.
		(B)	Example 2. Dealer activities.
		(C)	Example 3. Intercompany section 351 transfer.
		(D)	Example 4. Depreciable property.
		(E)	Example 5. Intercompany sale followed by installment sale.
		(F)	Example 6. Intercompany sale of installment obligation.
		(G)	Example 7. Performance of services.
		(H)	Example 8. Rental of property.
		(I)	Example 9. Intercompany sale of a partnership interest.
		(J)	Example 10. Net operating losses subject to section 382 or the SRLY rules.
		(K)	Example 11. Section 475.

Rule	General Location	Paragraph	Example
		(L)	Example 12. Section 1092.
		(M)	Example 13. [Reserved]
		(N)	Example 14. Source of income under section 863.
		(O)	Example 15. Section 1248.
		(P)	Example 16. Intercompany stock distribution followed by section 332 liquidation.
		(Q)	Example 17. Intercompany stock sale followed by section 355 distribution.
		(R)	Example 18. Redetermination of attributes for section 250 purposes.
(B) Acceleration rule.	§1.1502-13(d)(3)	(i)	Example 1. Becoming a nonmember—timing.
		(ii)	Example 2. Becoming a nonmember—attributes.
		(iii)	Example 3. Selling member's disposition of installment note.
		(iv)	Example 4. Cancellation of debt and attribute reduction under section 108(b).
		(v)	Example 5. Section 481.
(C) Simplifying rules—inventory.	§1.1502-13(e)(1)(v)	(A)	Example 1. Increment averaging method.
		(B)	Example 2. Increment valuation method.
		(C)	Example 3. Other reasonable inventory methods.
(D) Stock of members.	§1.1502-13(f)(7)	(i)	Example 1. Dividend exclusion and property distribution.
		(ii)	Example 2. Excess loss accounts.
		(iii)	Example 3. Intercompany reorganization.
		(iv)	Example 4. All cash intercompany reorganization under section 368(a)(1)(D).
		(v)	Example 5. Stock redemptions and distributions.
		(vi)	Example 6. Intercompany stock sale followed by section 332 liquidation.
		(vii)	Example 7. Intercompany stock sale followed by section 355 distribution.
(E) Obligations of members.	§1.1502-13(g)(7)(ii)	(A)	Example 1. Interest on intercompany obligation.
		(B)	Example 2. Intercompany obligation becomes nonintercompany obligation.
		(C)	Example 3. Loss or bad debt deduction with respect to intercompany obligation.
		(D)	Example 4. Intercompany nonrecognition transactions.
		(E)	Example 5. Assumption of intercompany obligation.
		(F)	Example 6. Extinguishment of intercompany obligation.
		(G)	Example 7. Exchange of intercompany obligations.
		(H)	Example 8. Tax benefit rule.
		(I)	Example 9. Issuance at off-market rate of interest.
		(J)	Example 10. Nonintercompany obligation becomes intercompany obligation.
		(K)	Example 11. Notional principal contracts.

Rule	General Location	Paragraph	Example
(F) Anti-avoidance rules.	§1.1502-13(h)(2)	(i)	Example 1. Sale of a partnership interest.
		(ii)	Example 2. Transitory status as an intercompany obligation.
		(iii)	Example 3. Corporate mixing bowl.
		(iv)	Example 4. Partnership mixing bowl.
		(v)	Example 5. Sale and leaseback.
		(vi)	Example 6. Section 163(j) interest limitation.
(G) Miscellaneous operating rules.	§1.1502-13(j)(10)	(i)	Example 1. Intercompany sale followed by section 351 transfer to member.
		(ii)	Example 2. Intercompany sale of member stock followed by recapitalization.
		(iii)	Example 3. Back-to-back intercompany transactions—matching.
		(iv)	Example 4. Back-to-back intercompany transactions—acceleration.
		(v)	Example 5. Successor group.
		(vi)	Example 6. Liquidation—80% distributee.
		(vii)	Example 7. Liquidation—no 80% distributee.
		(viii)	Example 8: Loan by section 987 QBU.
		(ix)	Example 9: Sale of property by section 987 QBU.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(B) *B controls unreasonable*. To the extent the results under paragraph (c)(4)(i)(A) of this section are inconsistent with treating S and B as divisions of a single corporation, the attributes of the offsetting items must be redetermined in a manner consistent with treating S and B as divisions of a single corporation. To the extent, however, that B's corresponding item on a separate entity basis is excluded from gross income, is a noncapital, nondeductible amount, or is otherwise permanently disallowed or eliminated, the attributes of B's corresponding item always control the attributes of S's offsetting intercompany item.

* * * * *

(5) *Special status*. Notwithstanding the general rule of paragraph (c)(1)(i) of this section, to the extent an item's attributes determined under this section are permitted or not permitted to a member under the Internal Revenue Code or regulations by reason of the member's special status, the attributes required under the Internal Revenue Code or regulations apply to that member's items (but not the other member). For example, if S is a bank to which section 582(c) applies, and sells debt securities at a gain to B, a nonbank, the character of S's intercompany gain is ordinary as required under section 582(c), but the character of B's corresponding item as capital or ordinary is determined under paragraph (c)(1)(i) of this section without the application of section 582(c). For other special status issues, *see*, for example, sections 818(b) (life insurance company treatment of capital gains and losses) and 1503(c) (limitation on absorption of certain losses).

* * * * *

(d) * * *

(3) *Examples*. The acceleration rule of this paragraph (d) is illustrated by the following examples.

(i) *Example 1. Becoming a nonmember – timing*—(A) *Facts*. S owns land with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. On July 1 of Year 3, P sells 60% of S's stock to X for $60 and, as a result, S becomes a nonmember.

(B) *Matching rule*. Under the matching rule, none of S's $30 gain is taken into account in Years 1 through 3 because there is no difference between B's $0 gain or loss taken into account and the recomputed gain or loss.

(C) *Acceleration of S's intercompany items*. Under the acceleration rule of paragraph (d) of this section, S's $30 gain is taken into account in computing consolidated taxable income (and consolidated tax liability) immediately before the effect of treating S and B as divisions of a single corporation cannot be produced. Because the effect cannot be produced once S becomes a nonmember, S takes its $30 gain into account in Year 3 immediately before becoming a nonmember. S's gain is reflected under §1.1502-32 in P's basis in the S stock immediately before P's sale of the stock. Under §1.1502-32, P's basis in the S stock is increased by $30, and therefore P's gain is reduced (or loss is increased) by $18 (60% of $30). *See also* §§1.1502-33 and 1.1502-76(b). (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(D) *B's corresponding items*. Notwithstanding the acceleration of S's gain, B continues to take its corresponding items into account under its accounting method. Thus, B's items from the land are taken into account based on subsequent events (for example, its sale of the land).

(E) *Sale of B's stock*. The facts are the same as in paragraph (d)(3)(i)(A) of this section (*Example 1*), except that P sells 60% of B's stock (rather than S stock) to X for $60 and, as a result, B becomes a nonmember. Because the effect of treating S and B as divisions of a single corporation cannot be produced once B becomes a nonmember, S takes its $30 gain into account under the acceleration rule immediately before B becomes a nonmember. (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(F) *Discontinue filing consolidated returns*. The facts are the same as in paragraph (d)(3)(i)(A) of this section (*Example 1*), except that the P group receives permission under §1.1502-75(c) to discontinue filing consolidated returns beginning in Year 3. Under the acceleration rule, S takes its $30 gain into account on December 31 of Year 2.

(G) *No subgroups*. The facts are the same as in paragraph (d)(3)(i)(A) of this section (*Example 1*), except that P simultaneously sells all of the stock of both S and B to X (rather than 60% of S's stock), and S and B become members of the X consolidated group. Because the effect of treating S and B as divisions of a single corporation in the P group cannot be produced once S and B become nonmembers, S takes its $30 gain into account under the acceleration rule immediately before S and B become nonmembers. (Paragraph (j)(5) of this section does not apply to treat the X consolidated group as succeeding to the P group because the X group acquired only the stock of S and B.) However, so long as S and B continue to join with each other in the filing of consolidated returns, B continues to treat S and B as divisions of a single corporation for purposes of determining the attributes of B's corresponding items from the land.

(ii) *Example 2. Becoming a nonmember – attributes*—(A) *Facts*. S holds land for investment with a basis of $70. On January 1 of Year 1, S sells the land to B for $100. B holds the land for sale to customers in the ordinary course of business, and expends substantial resources over a two-year period subdividing, developing, and marketing the land. On July 1 of Year 3, before B has sold any of the land, P sells 60% of S's stock to X for $60 and, as a result, S becomes a nonmember.

(B) *Attributes*. Under the acceleration rule, the attributes of S's gain are redetermined under the principles of the matching rule as if B sold the land to an affiliated corporation that is not a member of the group for a cash payment equal to B's adjusted basis in the land (because the land continues to be held within the group). Thus, whether S's gain is capital gain or ordinary income depends on the activities of both S and B. Because S and B no longer join with each other in the filing of consolidated returns, the attributes of B's corresponding items (for example, from its subsequent sale of the land) are redetermined under the principles of the matching rule as if the S division (but not the B division) were transferred by the single corporation to an unrelated person at the time of P's sale of the S stock. Thus, B continues to take into account the activities of S with respect to the land before the intercompany transaction.

(C) *Depreciable property*. The facts are the same as in paragraph (d)(3)(ii)(A) of this section (*Example 2*), except that the property sold by S to B is depreciable property. Section 1239 applies to treat all of S's gain as ordinary income because it is taken into account as a result of B's deemed sale of the property to an affiliated corporation that is not a member of the group (a related person within the meaning of section 1239(b)).

(iii) *Example 3. Selling member's disposition of installment note*—(A) *Facts*. S owns land with a basis of $70. On January 1 of Year 1, S sells the land to B in exchange for B's $110 note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of $55 in Year 4 and $55 in Year 5. On July 1 of Year 3, S sells B's note to X for $110.

(B) *Timing*. S's intercompany gain is taken into account under this section, and not under the rules of section 453. Consequently, S's sale of B's note does not result in its intercompany gain from the land being taken into account (for example, under section 453B). The sale does not prevent S's intercompany items and B's corresponding items from being taken into account in determining the group's consolidated taxable income under the matching rule, and X does not reflect any aspect of the intercompany transaction (X has its own cost basis in the note). S will take the intercompany gain into account under the matching rule or acceleration rule based on subsequent events (for example, B's sale of the land). *See also* paragraph (g) of this section for additional rules applicable to B's note as an intercompany obligation.

(iv) *Example 4. Cancellation of debt and attribute reduction under section 108(b)*—(A) *Facts*. S holds land for investment with a basis of $0. On January 1 of Year 1, S sells the land to B for $100. B also holds the land for investment. During Year 3, B is insolvent and B's nonmember creditors discharge $60 of B's indebtedness. Because of insolvency, B's $60 discharge is excluded from B's gross income under section 108(a), and B reduces the basis of the land by $60 under sections 108(b) and 1017.

(B) *Acceleration rule*. As a result of B's basis reduction under section 1017, $60 of S's intercompany gain will not be taken into account under the matching rule (because there is only a $40 difference between B's $40 basis in the land and the $0 basis the land would have if S and B were divisions of a single corporation). Accordingly, S takes $60 of its gain into account under the acceleration rule in Year 3. S's gain is long-term capital gain, determined under paragraph (d)(1)(ii) of this section as if B sold the land to an affiliated corporation that is not a member of the group for $100 immediately before the basis reduction.

(C) *Purchase price adjustment*. Assume instead that S sells the land to B in exchange for B's $100 purchase money note, B remains solvent, and S subsequently agrees to discharge $60 of the note as a purchase price adjustment to which section 108(e)(5) applies. Under applicable principles of tax law, $60 of S's gain and $60 of B's basis in the land are eliminated and never taken into account. Similarly, the note is not treated as satisfied and reissued under paragraph (g) of this section.

(v) *Example 5. Section 481*—(A) *Facts*. S operates several trades or businesses, including a manufacturing business. S receives permission to change its method of accounting for valuing inventory for its manufacturing business. S increases the basis of its ending inventory by $100, and the related $100 positive section 481(a) adjustment is to be taken into account ratably over six taxable years, beginning in Year 1. During Year 3, S sells all of the assets used in its manufacturing business to B at a gain. Immediately after the transfer, B does not use the same inventory valuation method as S. On a separate entity basis, S's sale results in an acceleration of the balance of the section 481(a) adjustment to Year 3.

(B) *Timing and attributes*. Under paragraph (b)(2) of this section, the balance of S's section 481(a) adjustment accelerated to Year 3 is intercompany income. However, S's $100 basis increase before the intercompany transaction eliminates the related difference for this amount between B's corresponding items taken into account and the recomputed corresponding items in subsequent periods. Because the accelerated section 481(a) adjustment will not be taken into account in determining the group's consolidated taxable income (and consolidated tax liability) under the matching rule, the balance of S's section 481 adjustment is taken into account under the acceleration rule as ordinary income at the time of the intercompany transaction. (If S's sale had not resulted in accelerating S's section 481(a) adjustment on a separate entity basis, S would have no intercompany income to be taken into account under this section.)

* * * * *

(e) * * *

(1) * * *

(v) *Examples*. The inventory rules of this paragraph (e)(1) are illustrated by the following examples.

(A) *Example 1. Increment averaging method*—(*1*) *Facts*. Both S and B use a double-extension, dollar-value LIFO inventory method, and both value inventory increments using the earliest acquisitions cost valuation method. During Year 2, S sells 25 units of product Q to B on January 15 at $10/unit. S sells another 25 units on April 15, on July 15, and on September 15, at $12/unit. S's earliest cost of product Q is $7.50/unit and S's most recent cost of product Q is $8.00/unit. Both S and B have an inventory increment for the year. B's total inventory costs incurred during Year 2 are $6,000 and the LIFO value of B's Year 2 layer of increment is $600.

(*2*) *Intercompany inventory income*. Under paragraph (e)(1)(iii) of this section, S must use a reasonable method of allocating its LIFO inventory costs to intercompany transactions. Because S has an inventory increment for Year 2 and uses the earliest acquisitions cost method, a reasonable method of determining its intercompany cost of goods sold for product Q is to use its most recent costs. Thus, its intercompany cost of goods sold is $800 ($8.00 most recent cost, multiplied by 100 units sold to B), and its intercompany inventory income is $350 ($1,150 sales proceeds from B minus $800 cost).

(*3*) *Timing*. (*i*) Under the increment averaging method of paragraph (e)(1)(ii)(B) of this section, $35 of S's $350 of intercompany inventory income is not taken into account in Year 2, computed as follows: LIFO value of B's Year 2 layer of increment / B's total inventory costs for year 2, or $600 / $6,000 = 10%. 10% x S's $350 intercompany inventory income = $35.

(*ii*) Thus, $315 of S's intercompany inventory income is taken into account in Year 2 ($350 of total intercompany inventory income minus $35 not taken into account).

(*4*) *S incurs a decrement*. The facts are the same as in paragraph (e)(1)(v)(A)(*1*) of this section (*Example 1*), except that in Year 2, S incurs a decrement equal to 50% of its Year 1 layer. Under paragraph (e)(1)(iii) of this section, S must reasonably allocate the LIFO cost of the decrement to the cost of goods sold to B to determine S's intercompany inventory income.

(*5*) *B incurs a decrement*. The facts are the same as in paragraph (e)(1)(v)(A)(*1*) of this section (*Example 1*), except that B incurs a decrement in Year 2. S must take into account the entire $350 of Year 2 intercompany inventory income because all 100 units of product Q are deemed sold by B in Year 2.

(B) *Example 2. Increment valuation method*—(*1*) *Facts*. The facts are the same as in paragraph (e)(1)(v)(A)(*1*) of this section (*Example 1*). In addition, B's use of the earliest acquisition's cost method of valuing its increments results in B valuing its year-end inventory using costs incurred from January through March. B's costs incurred during the year are: $1,428 in the period January through March; $1,498 in the period April through June; $1,524 in the period July through September; and $1,550 in the period October through December. S's intercompany inventory income for these periods is: $50 in the period January through March ((25 × $10)−(25 × $8)); $100 in the period April through June ((25 × $12)−(25 × $8)); $100 in the period July through September ((25 × $12)−(25 × $8)); and $100 in the period October through December ((25 × $12)−(25 × $8)).

(*2*) *Timing*. (*i*) Under the increment valuation method of paragraph (e)(1)(ii)(C) of this section, $21 of S's $350 of intercompany inventory income is not taken into account in Year 2, computed as follows: LIFO value of B's Year 2 layer of increment / B's total inventory costs from January through March of Year 2, or $600 / $1,428 = 42%. 42% x S's $50 intercompany inventory income for the period from January through March = $21.

(*ii*) Thus, $329 of S's intercompany inventory income is taken into account in Year 2 ($350 of total intercompany inventory income minus $21 not taken into account).

(*3*) *B incurs a subsequent decrement*. The facts are the same as in paragraph (e)(1)(v)(B)(*1*) of this section (*Example 2*). In addition, assume that in Year 3, B experiences a decrement in its pool that receives intercompany purchases from S. B's decrement equals 20% of the base-year costs for its Year 2 layer. The fact that B has incurred a decrement means that all of its inventory costs incurred for Year 3 are included in cost of goods sold. As a result, S takes into account its entire amount of intercompany inventory income from its Year 3 sales. In addition, S takes into account $4.20 of its Year 2 layer of intercompany inventory income not already taken into account (20% of $21).

(C) *Example 3. Other reasonable inventory methods*—(*1*) *Facts*. Both S and B use a dollar-value LIFO inventory method for their inventory transactions. During Year 1, S sells inventory to B and to X. Under paragraph (e)(1)(iv) of this section, to compute its intercompany inventory income and the amount of this income not taken into account, S computes its intercompany inventory income using the transfer price of the inventory items less a FIFO cost for the goods, takes into account these items based on a FIFO cost flow assumption for B's corresponding items, and the LIFO methods used by S and B are ignored for these computations. These computations are comparable to the methods used by S and B for financial reporting purposes, and the book methods and results are used for tax purposes. S adjusts the amount of intercompany inventory items not taken into account as required by section 263A.

(*2*) *Reasonable method*. The method used by S is a reasonable method under paragraph (e)(1)(iv) of this section if the cumulative amount of intercompany inventory items not taken into account by S is not significantly greater than the cumulative amount that would not be taken into account under the methods specifically described in paragraph (e)(1) of this section. If, for any year, the method results in a cumulative amount of intercompany inventory items not taken into account by S that significantly exceeds the cumulative amount that would not be taken into account under the methods specifically provided, S must take into account for that year the amount necessary to eliminate the excess. The method is thereafter applied with appropriate adjustments to reflect the amount taken into account (for example, to prevent the amount from being taken into account more than once).

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(f) * * *

(5) * * *

(ii) * * *

(B) * * *

(*2*) *Time limitation and adjustments*. The transfer of old T's assets to new T qualifies under paragraph (f)(5)(ii)(B)(*1*) of this section only if B has entered into a written plan, on or before the due date of the group's consolidated income tax return (including extensions) for the tax year that includes the date of old T's liquidation, to transfer the old T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated income tax return (including extensions) for the tax year that includes the date of the liquidation. The transfer of substantially all of T's assets to new T must be completed within 12 months of the filing of the return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under paragraph (f)(3) of this section as acquired by new T but distributed to B immediately after the reorganization.

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(F) *Applicability date.* Paragraphs (f)(5)(ii)(B)(*1*) and (*2*) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(6) * * *

(ii) *Gain stock.* For dispositions of P stock, *see* §1.1032-3.

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(v) *Applicability date.* This paragraph (f)(6) applies to gain or loss taken into account on or after July 12, 1995, and to transactions occurring on or after July 12, 1995.

(7) *Examples – In general*. The application of this section to intercompany transactions with respect to stock of members is illustrated by the following examples.

(i) *Example 1. Dividend exclusion and property distribution*—(A) *Facts*. S owns land with a $70 basis and $100 value. On January 1 of Year 1, P's basis in S's stock is $100. During Year 1, S declares and makes a dividend distribution of the land to P. Under section 311(b), S has a $30 gain. Under section 301(d), P's basis in the land is $100. On July 1 of Year 3, P sells the land to X for $110.

(B) *Dividend elimination and stock basis adjustments*. Under paragraph (b)(1) of this section, S's distribution to P is an intercompany distribution. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Under §1.1502-32, P's basis in S's stock is reduced from $100 to $0 in Year 1.

(C) *Matching rule and stock basis adjustments*. Under the matching rule (treating P as the buying member and S as the selling member), S takes its $30 gain into account in Year 3 to reflect the $30 difference between P's $10 gain taken into account and the $40 recomputed gain. Under §1.1502-32, P's basis in S's stock is increased from $0 to $30 in Year 3.

(D) *Loss property*. The facts are the same as in paragraph (f)(7)(i)(A) of this section (*Example 1*), except that S has a $130 (rather than $70) basis in the land. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to S's loss from the intercompany distribution. Thus, S has a $30 loss that is taken into account under the matching rule in Year 3 to reflect the $30 difference between P's $10 gain taken into account and the $20 recomputed loss. (The results are the same under section 267(f).) Under §1.1502-32, P's basis in S's stock is reduced from $100 to $0 in Year 1, and from $0 to a $30 excess loss account in Year 3. (If P had distributed the land to its shareholders, rather than selling the land to X, P would take its $10 gain under section 311(b) into account, and S would take its $30 loss into account under the matching rule with $10 offset by P's gain and $20 recharacterized as a noncapital, nondeductible amount.)

(E) *Entitlement rule*. The facts are the same as in paragraph (f)(7)(i)(A) of this section (*Example 1*), except that, after P becomes entitled to the distribution but before the distribution is made, S issues additional stock to the public and becomes a nonmember. Under paragraph (f)(2)(i) of this section, the determination of whether a distribution is an intercompany distribution is made under the entitlement rule of paragraph (f)(2)(iv) of this section. Treating S's distribution as made when P becomes entitled to it results in the distribution being an intercompany distribution. Under paragraph (f)(2)(ii) of this section, the distribution is not included in P's gross income. S's $30 gain from the distribution is intercompany gain that is taken into account under the acceleration rule immediately before S becomes a nonmember. Thus, there is a net $70 decrease in P's basis in its S stock under §1.1502-32 ($100 decrease for the distribution and a $30 increase for S's $30 gain). Under paragraph (f)(2)(iv) of this section, P does not take the distribution into account again under separate return rules when received, and P is not entitled to a dividends received deduction.

(ii) *Example 2. Excess loss accounts*—(A) *Facts*. S owns all of T's only class of stock with a $10 basis and $100 value. S has substantial earnings and profits, and T has $10 of earnings and profits. On January 1 of Year 1, S declares and distributes a dividend of all of the T stock to P. Under section 311(b), S has a $90 gain. Under section 301(d), P's basis in the T stock is $100. During Year 3, T borrows $90 and declares and makes a $90 distribution to P to which section 301 applies, and P's basis in the T stock is reduced under §1.1502-32 from $100 to $10. During Year 6, T has $5 of earnings that increase P's basis in the T stock under §1.1502-32 from $10 to $15. On December 1 of Year 9, T issues additional stock to X and, as a result, T becomes a nonmember.

(B) *Dividend exclusion*. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income from S's distribution of the T stock, and its $10 of dividend income from T's $90 distribution, are not included in gross income.

(C) *Matching and acceleration rules*. Under §1.1502-19(b)(1), when T becomes a nonmember P must include in income the amount of its excess loss account (if any) in T stock. P has no excess loss account in the T stock. Therefore P's corresponding item from the deconsolidation of T is $0. Treating S and P as divisions of a single corporation, the T stock would continue to have a $10 basis after the distribution, and the adjustments under §1.1502-32 for T's $90 distribution and $5 of earnings would result in a $75 excess loss account. Thus, the recomputed corresponding item from the deconsolidation is $75. Under the matching rule, S takes $75 of its $90 gain into account in Year 9 as a result of T becoming a nonmember, to reflect the difference between P's $0 gain taken into account and the $75 recomputed gain. S's remaining $15 of gain is taken into account under the matching and acceleration rules based on subsequent events (for example, under the matching rule if P subsequently sells its T stock, or under the acceleration rule if S becomes a nonmember).

(D) *Reverse sequence*. The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that T borrows $90 and makes its $90 distribution to S before S distributes T's stock to P. Under paragraph (f)(2)(ii) of this section, T's $90 distribution to S ($10 of which is a dividend) is not included in S's gross income. The corresponding negative adjustment under §1.1502-32 reduces S's basis in the T stock from $10 to an $80 excess loss account. Under section 311(b), S has a $90 gain from the distribution of T stock to P. Under section 301(d) P's initial basis in the T stock is $10 (the stock's fair market value), and the basis increases to $15 under §1.1502-32 as a result of T's earnings in Year 6. The timing and attributes of S's gain are determined in the manner provided in paragraph (f)(7)(ii)(C) of this section (*Example 2*). Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events.

(E) *Partial stock sale*. The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that P sells 10% of T's stock to X on December 1 of Year 9 for $1.50 (rather than T's issuing additional stock and becoming a nonmember). Under the matching rule, S takes $9 of its gain into account to reflect the difference between P's $0 gain taken into account ($1.50 sale proceeds minus $1.50 basis) and the $9 recomputed gain ($1.50 sale proceeds plus $7.50 excess loss account).

(F) *Loss, rather than cash distribution*. The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that T retains the loan proceeds and incurs a $90 loss in Year 3 that is absorbed by the group. The timing and attributes of S's gain are determined in the same manner provided in paragraph (f)(7)(ii)(C) of this section (*Example 2*). Under §1.1502-32, the loss in Year 3 reduces P's basis in the T stock from $100 to $10, and T's $5 of earnings in Year 6 increase the basis to $15. Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events. (The timing and attributes of S's gain would be determined in the same manner provided in paragraph (f)(7)(ii)(D) of this section (*Example 2*) if T incurred the $90 loss before S's distribution of the T stock to P.)

(G) *Stock sale, rather than stock distribution*. The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that S sells the T stock to P for $100 (rather than distributing the stock). The timing and attributes of S's gain are determined in the same manner provided in paragraph (f)(7)(ii)(C) of this section (*Example 2*). Thus, $75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining $15 is taken into account under the matching and acceleration rules based on subsequent events.

(iii) *Example 3. Intercompany reorganization*—(A) *Facts*. P forms S and B by contributing $200 to the capital of each. During Years 1 through 4, S and B each earn $50, and under §1.1502-32 P adjusts its basis in the stock of each to $250. (*See* §1.1502-33 for adjustments to earnings and profits.) On January 1 of Year 5, the fair market value of S's assets and its stock is $500, and S merges into B in a tax-free reorganization. Pursuant to the plan of reorganization, P receives B stock with a fair market value of $350 and $150 of cash.

(B) *Treatment as a section 301 distribution*. The merger of S into B is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving additional B stock with a fair market value of $500 and, under section 358, a basis of $250. Immediately after the merger, $150 of the stock received is treated as redeemed, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. Because the $150 distribution is treated as not received as part of the merger, section 356 does not apply and no basis adjustments are required under section 358(a)(1)(A) and (B). Because B is treated under section 381(c)(2) as receiving S's earnings and profits and the redemption is treated as occurring after the merger, $100 of the distribution is treated as a dividend under section 301 and P's basis in the B stock is reduced correspondingly under §1.1502-32. The remaining $50 of the distribution reduces P's basis in the B stock. Section 301(c)(2) and §1.1502-32. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Under §1.302-2(c), proper adjustments are made to P's basis in its B stock to reflect its basis in the B stock redeemed, with the result that P's basis in the B stock is reduced by the entire $150 distribution.

(C) *Depreciated property*. The facts are the same as in paragraph (f)(7)(iii)(A) of this section (*Example 3*), except that property of S with a $200 basis and $150 fair market value is distributed to P (rather than cash of B). As in paragraph (f)(7)(iii)(B) of this section (*Example 3*), P is treated as receiving additional B stock in the merger and a $150 distribution to which section 301 applies immediately after the merger. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to B's $50 loss and the loss is taken into account under the matching and acceleration rules based on subsequent events (for example, under the matching rule if P subsequently sells the property, or under the acceleration rule if B becomes a nonmember). The results are the same under section 267(f).

(D) *Divisive transaction*. Assume instead that, pursuant to a plan, S distributes the stock of a lower-tier subsidiary in a spin-off transaction to which section 355 applies together with $150 of cash. The distribution of stock is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving the $150 of cash immediately before the section 355 distribution, as a distribution to which section 301 applies. Section 356(b) does not apply and no basis adjustments are required under section 358(a)(1) (A) and (B). Because the $150 distribution is treated as made before the section 355 distribution, the distribution reduces P's basis in the S stock under §1.1502-32, and the basis allocated under section 358(c) between the S stock and the lower-tier subsidiary stock received reflects this basis reduction.

(iv) *Example 4. All cash intercompany reorganization under section 368(a)(1)(D)*—(A) *Facts*. P owns all of the stock of M and B. M owns all of the stock of S with a basis of $25. On January 1 of Year 2, the fair market value of S's assets and its stock is $100, and S sells all of its assets to B for $100 cash and liquidates. The transaction qualifies as a reorganization described in section 368(a)(1)(D). Pursuant to §1.368-2(l), B will be deemed to issue a nominal share of B stock to S in addition to the $100 of cash actually exchanged for the S assets, and S will be deemed to distribute all of the consideration to M. M will be deemed to distribute the nominal share of B stock to P.

(B) *Treatment as a section 301 distribution*. The sale of S's assets to B is a transaction to which paragraph (f)(3) of this section applies. In addition to the nominal share issued by B to S under §1.368-2(l), S is treated as receiving additional B stock with a fair market value of $100 (in lieu of the $100) and, under section 358, a basis of $25 which S distributes to M in liquidation. Immediately after the sale, the B stock (with the exception of the nominal share which is still held by M) received by M is treated as redeemed for $100, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. M's basis of $25 in the B stock is reduced under §1.1502-32(b)(3)(v), resulting in an excess loss account of $75 in the nominal share. (*See* §1.302-2(c)). M's deemed distribution of the nominal share of B stock to P under §1.368-2(l) will result in M generating an intercompany gain under section 311(b) of $75, to be subsequently taken into account under the matching and acceleration rules.

(v) *Example 5. Stock redemptions and distributions*—(A) *Facts*. Before becoming a member of the P group, S owns P stock with a $30 basis. On January 1 of Year 1, P buys all of S's stock. On July 1 of Year 3, P redeems the P stock held by S for $100 in a transaction to which section 302(a) applies.

(B) *Gain under section 302*. Under paragraph (f)(4) of this section, P's basis in the P stock acquired from S is treated as eliminated. As a result of this elimination, S's intercompany item will never be taken into account under the matching rule because P's basis in the stock does not reflect S's intercompany item. Therefore, S's $70 gain is taken into account under the acceleration rule in Year 3. The attributes of S's item are determined under paragraph (d)(1)(ii) of this section by applying the matching rule as if P had sold the stock to an affiliated corporation that is not a member of the group at no gain or loss. Although P's corresponding item from a sale of its stock would have been excluded from gross income under section 1032, paragraph (c)(6)(ii) of this section prevents S's gain from being treated as excluded from gross income; instead S's gain is capital gain.

(C) *Gain under section 311*. The facts are the same as in paragraph (f)(7)(v)(A) of this section (*Example 5*), except that S distributes the P stock to P in a transaction to which section 301 applies (rather than the stock being redeemed), and S has a $70 gain under section 311(b). The timing and attributes of S's gain are determined in the manner provided in paragraph (f)(7)(v)(B) of this section (*Example 5*).

(D) *Loss stock*. The facts are the same as in paragraph (f)(7)(v)(A) of this section (*Example 5*), except that S has a $130 (rather than $30) basis in the P stock and has a $30 loss under section 302(a). The limitation under paragraph (c)(6)(ii) of this section does not apply to intercompany losses. Thus, S's loss is taken into account in Year 3 as a noncapital, nondeductible amount.

(vi) *Example 6. Intercompany stock sale followed by section 332 liquidation*—(A) *Facts*. S owns all of the stock of T, with a $70 basis and $100 value, and T's assets have a $10 basis and $100 value. On January 1 of Year 1, S sells all of T's stock to B for $100. On July 1 of Year 3, when T's assets are still worth $100, T distributes all of its assets to B in an unrelated complete liquidation to which section 332 applies.

(B) *Timing and attributes*. Under paragraph (b)(3)(ii) of this section, B's unrecognized gain or loss under section 332 is a corresponding item for purposes of applying the matching rule. In Year 3 when T liquidates, B has $0 of unrecognized gain or loss under section 332 because B has a $100 basis in the T stock and receives a $100 distribution with respect to its T stock. Treating S and B as divisions of a single corporation, the recomputed corresponding item would have been $30 of unrecognized gain under section 332 because B would have succeeded to S's $70 basis in the T stock. Thus, under the matching rule, S's $30 intercompany gain is taken into account in Year 3 as a result of T's liquidation. Under paragraph (c)(1)(i) of this section, the attributes of S's gain and B's corresponding item are redetermined as if S and B were divisions of a single corporation. Although S's gain ordinarily would be redetermined to be treated as excluded from gross income to reflect the nonrecognition of B's gain under section 332, S's gain remains capital gain because B's unrecognized gain under section 332 is not permanently and explicitly disallowed under the Code. *See* paragraph (c)(6)(ii) of this section. However, relief may be elected under paragraph (f)(5)(ii) of this section.

(C) *Intercompany sale at a loss*. The facts are the same as in paragraph (f)(7)(vi)(A) of this section (*Example 6*), except that S has a $130 (rather than $70) basis in the T stock. The limitation under paragraph (c)(6)(ii) of this section does not apply to intercompany losses. Thus, S's intercompany loss is taken into account in Year 3 as a noncapital, nondeductible amount. However, relief may be elected under paragraph (f)(5)(ii) of this section.

(vii) *Example 7. Intercompany stock sale followed by section 355 distribution*—(A) *Facts*. S owns all of the stock of T with a $70 basis and a $100 value. On January 1 of Year 1, S sells all of T's stock to M for $100. On June 1 of Year 6, M distributes all of its T stock to its nonmember shareholders in a transaction to which section 355 applies. At the time of the distribution, M has a basis in T stock of $100 and T has a value of $150.

(B) *Timing and attributes*. Under paragraph (b)(3)(ii) of this section, M's $50 gain not recognized on the distribution under section 355 is a corresponding item. Treating S and M as divisions of a single corporation, the recomputed corresponding item would be $80 of unrecognized gain under section 355 because M would have succeeded to S's $70 basis in the T stock. Thus, under the matching rule, S's $30 intercompany gain is taken into account in Year 6 as a result of the distribution. Under paragraph (c)(1)(i) of this section, the attributes of S's intercompany item and M's corresponding item are redetermined to produce the same effect on consolidated taxable income as if S and M were divisions of a single corporation. Although S's gain ordinarily would be redetermined to be treated as excluded from gross income to reflect the nonrecognition of M's gain under section 355(c), S's gain remains capital gain because M's unrecognized gain under section 355(c) is not permanently and explicitly disallowed under the Code. *See* paragraph (c)(6)(ii) of this section. Because M's distribution of the T stock is not an intercompany transaction, relief is not available under paragraph (f)(5)(ii) of this section.

(C) *Section 355 distribution within the group*. The facts are the same as under paragraph (f)(7)(vii)(A) of this section (*Example 7*), except that M distributes the T stock to B (another member of the group), and B takes a $75 basis in the T stock under section 358. Under paragraph (j)(2) of this section, B is a successor to M for purposes of taking S's intercompany gain into account, and therefore both M and B might have corresponding items with respect to S's intercompany gain. To the extent it is possible, matching with respect to B's corresponding items produces the result most consistent with treating S, M, and B as divisions of a single corporation. *See* paragraphs (j)(3) and (j)(4) of this section. However, because there is only $5 difference between B's $75 basis in the T stock and the $70 basis the stock would have if S, M, and B were divisions of a single corporation, only $5 can be taken into account under the matching rule with respect to B's corresponding items. (This $5 is taken into account with respect to B's corresponding items based on subsequent events.) The remaining $25 of S's $30 intercompany gain is taken into account in Year 6 under the matching rule with respect to M's corresponding item from its distribution of the T stock. The attributes of S's remaining $25 of gain are determined in the same manner as in paragraph (f)(7)(vii)(B) of this section (*Example 7*).

(D) *Relief elected*. The facts are the same as in paragraph (f)(7)(vii)(C) of this section (*Example 7*) except that P elects relief pursuant to paragraph (f)(5)(ii)(D) of this section. As a result of the election, M's distribution of the T stock is treated as subject to sections 301 and 311 instead of section 355. Accordingly, M recognizes $50 of intercompany gain from the distribution, B takes a basis in the stock equal to its fair market value of $150, and S and M take their intercompany gains into account with respect to B's corresponding items based on subsequent events. (None of S's gain is taken into account in Year 6 as a result of M's distribution of the T stock.)

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(g) * * *

(7) *Examples*—(i) *In general*. For purposes of the examples in this paragraph (g), unless otherwise stated, interest is qualified stated interest under §1.1273-1(c), and the intercompany obligations are capital assets and are not subject to section 475.

(ii) The application of this section to obligations of members is illustrated by the following examples:

(A) *Example 1. Interest on intercompany obligation*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. B fully performs its obligations. Under their separate entity methods of accounting, B accrues a $10 interest deduction annually under section 163, and S accrues $10 of interest income annually under section 61(a)(4) and §1.446-2.

(*2*) *Matching rule*. Under paragraph (b)(1) of this section, the accrual of interest on B's note is an intercompany transaction. Under the matching rule, S takes its $10 of income into account in each of years 1 through 5 to reflect the $10 difference between B's $10 of interest expense taken into account and the $0 recomputed expense. S's income and B's deduction are ordinary items. (Because S's intercompany item and B's corresponding item would both be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section.)

(*3*) *Original issue discount*. The facts are the same as in paragraph (g)(7)(ii)(A)(*1*) of this section (*Example 1*), except that B borrows $90 (rather than $100) from S in return for B's note providing for

$10 of interest annually and repayment of $100 at the end of year 5. The principles described in paragraph (g)(7)(ii)(A)(*2*) of this section (*Example 1*) for stated interest also apply to the $10 of original issue discount. Thus, as B takes into account its corresponding expense under section 163(e), S takes into account its intercompany income under section 1272. S's income and B's deduction are ordinary items.

(*4*) *Tax-exempt income*. The facts are the same as in paragraph (g)(7)(ii)(A)(*1*) of this section (*Example 1*), except that B's borrowing from S is allocable under section 265 to B's purchase of state and local bonds to which section 103 applies. The timing of S's income is the same as in paragraph (g)(7)(ii)(A)(*2*) of this section (*Example 1*). Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item of disallowed interest expense control the attributes of S's offsetting intercompany interest income. Paragraph (c)(6) of this section does not prevent the redetermination of S's intercompany item as excluded from gross income because section 265(a)(2) permanently and explicitly disallows B's corresponding deduction and because, under paragraph (g)(4)(i)(B) of this section, paragraph (c)(6)(ii) of this section does not apply to prevent any intercompany income from the B note from being excluded from gross income. Accordingly, S's intercompany income is treated as excluded from gross income.

(B) *Example 2. Intercompany obligation becomes nonintercompany obligation*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has paid the interest accruing under the note and S sells B's note to X for $70, reflecting an increase in prevailing market interest rates. B is never insolvent within the meaning of section 108(d)(3).

(*2*) *Deemed satisfaction and reissuance*. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $70 immediately before S's sale to X. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account $30 of discharge of indebtedness income under §1.61-12. On a separate entity basis, S's $30 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's $30 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis in the hands of S. S is then treated as selling the new note to X for the $70 received by S in the actual transaction. Because S has a basis of $70 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis. The $30 of original issue discount will be taken into account by B and X under sections 163(e) and 1272.

(*3*) *Creditor deconsolidation*. The facts are the same as in paragraph (g)(7)(ii)(B)(*1*) of this section (*Example 2*), except that P sells S's stock to X (rather than S selling B's note to X). Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its $70 fair market value immediately before S becomes a nonmember. The treatment of S's $30 of loss and B's $30 of discharge of indebtedness income is the same as in paragraph (g)(7)(ii)(B)(*2*) of this section (*Example 2*). The new note held by S upon deconsolidation is not an intercompany obligation, it has a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis. The $30 of original issue discount will be taken into account by B and S under sections 163(e) and 1272.

(*4*) *Debtor deconsolidation*. The facts are the same as in paragraph (g)(7)(ii)(B)(*1*) of this section (*Example 2*), except that P sells B's stock to X (rather than S selling B's note to X). The results to S and B are the same as in paragraph (g)(7)(ii)(B)(*3*) of this section (*Example 2*).

(*5*) *Subgroup exception*. The facts are the same as in paragraph (g)(7)(ii)(B)(*1*) of this section (*Example 2*), except that P owns all of the stock of S, S owns all of the stock of B, and P sells all of the S stock to X, the parent of another consolidated group. Because B and S, members of an intercompany obligation subgroup, cease to be members of the P group in a transaction that does not cause either member to recognize an item with respect to the B note, and such members constitute an intercompany obligation subgroup in the X group, P's sale of S stock is not a triggering transaction under paragraph (g)(3)(i)(B)(*8*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. After the sale, the note held by S has a $100 issue price, a $100 stated redemption price at maturity, and a $100 basis. The results are the same if the S stock is sold to an individual and the S-B affiliated group elects to file a consolidated return for the period beginning on the day after S and B cease to be members of the P group.

(*6*) *Section 338 election*. The facts are the same as in paragraph (g)(7)(ii)(B)(*1*) of this section (*Example 2*), except that P sells S's stock to X and a section 338 election is made with respect to the stock sale. Under section 338, S is treated as selling all of its assets to new S, including the B note, at the close of the acquisition date. The aggregate deemed sales price (within the meaning of §1.338-4) allocated to the B note is $70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(2) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's deemed sale to new S for $70, the amount realized with respect to the note (the aggregate deemed sales price allocated to the note under §1.338-6). The results to S and B are the same as in paragraph (g)(7)(ii)(B)(*2*) of this section (*Example 2*).

(*7*) *Appreciated note*. The facts are the same as in paragraph (g)(7)(ii)(B)(*1*) of this section (*Example 2*), except that S sells B's note to X for $130 (rather than $70), reflecting a decline in prevailing market interest rates. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $130 immediately before S's sale to X. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under §1.163-7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. S is then treated as selling the new note to X for the $130 received by S in the actual transaction. Because S has a basis of $130 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a $130 issue price, a $100 stated redemption price at maturity, and a $130 basis. The treatment of B's $30 of bond issuance premium under the new note is determined under §1.163-13.

(*8*) *Deferral of loss or deduction with respect to nonmember indebtedness acquired in debt exchange*. The facts are the same as in paragraph (g)(7)(ii)(B)(*1*) of this section (*Example 2*), except that S sells B's note to X for a non-publicly traded X note with an issue price and face amount of $100 and a fair market value of $70, and that, subsequently, S sells the X note for $70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's sale to X for $100, the amount realized with respect to the note (determined under section 1274). As a result of the deemed satisfaction, neither S nor B take into account any items of income, gain, deduction, or loss. S is then treated as selling the new B note to X for the X note received by S in the actual transaction. Because S has a basis of $100 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new B note held by X is not an intercompany obligation, it has a $100 issue price, a $100 stated redemption price at maturity, and a $100 basis. S also holds an X note with a basis of $100 but a fair market value of $70. When S disposes of the X note, S's loss on the disposition is deferred under paragraph (g)(4)(iv) of this section, until B retires its note (the former intercompany obligation in the hands of X).

(C) *Example 3. Loss or bad debt deduction with respect to intercompany obligation*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. On January 1 of year 3, the fair market value of the B note has declined to $60 and S sells the B note to P for property with a fair market value of $60. B is never insolvent within the meaning of section 108(d)(3). The B note is not a security within the meaning of section 165(g)(2).

(*2*) *Deemed satisfaction and reissuance*. Because S realizes an amount of loss from the assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $60 immediately before S's sale to P. As a result of the deemed satisfaction of the note for less than its adjusted issue price ($100), B takes into account $40 of discharge of indebtedness income under §1.61-12. On a separate entity basis, S's $40 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's $40 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $60 issue price, $100 stated redemption price at maturity, and $60 basis in the hands of S. S is then treated as selling the new note to P for the $60 of property received by S in the actual transaction. Because S has a basis of $60 in the new note, S recognizes no gain or loss from the sale to P. After the sale, the note is an intercompany obligation, it has a $60 issue price and a $100 stated redemption price at maturity, and the $40 of original issue discount will be taken into account by B and P under sections 163(e) and 1272.

(*3*) *Partial bad debt deduction*. The facts are the same as in paragraph (g)(7)(ii)(C)(*1*) of this section (*Example 3*), except that S claims a $40 partial bad debt deduction under section 166(a)(2) (rather than selling the note to P). Because S realizes a deduction from a transaction comparable to an assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $60 immediately before section 166(a)(2) applies. The treatment of S's $40 loss and B's $40 of discharge of indebtedness income are the same as in paragraph (g)(7)(ii)(C)(*2*) of this section (*Example 3*). After the reissuance, S has a basis of $60 in the new note. Accordingly, the application of section 166(a)(2) does not result in any additional deduction for S. The $40 of original issue discount on the new note will be taken into account by B and S under sections 163(e) and 1272.

(*4*) *Insolvent debtor*. The facts are the same as in paragraph (g)(7)(ii)(C)(*1*) of this section (*Example 3*), except that B is insolvent within the meaning of section 108(d)(3) at the time that S sells the note to P. As explained in paragraph (g)(7)(ii)(C)(*2*) of this section (*Example 3*), the transaction is a triggering transaction and the B note is treated as satisfied and reissued for its fair market value of $60 immediately before S's sale to P. On a separate entity basis, S's $40 loss would be capital, B's $40 income would be excluded from gross income under section 108(a), and B would reduce attributes under section 108(b) or section 1017 (*see also* §1.1502-28). However, under paragraph (g)(4)(i)(C) of this section, section 108(a) does not apply to characterize B's income as excluded from gross income. Accordingly, the attributes of S's loss and B's income are redetermined in the same manner as in paragraph (g)(7)(ii)(C)(*2*) of this section (*Example 3*).

(D) *Example 4. Intercompany nonrecognition transactions*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $130, reflecting a decline in prevailing market interest rates. On January 1 of year 3, S transfers the note and other assets to a newly formed corporation, Newco, for all of Newco's common stock in an exchange to which section 351 applies.

(*2*) *No deemed satisfaction and reissuance*. Because the assignment of the B note is an exchange to which section 351 applies and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(*3*) *Receipt of other property*. The facts are the same as in paragraph (g)(7)(ii)(D)(*1*) of this section (*Example 4*), except that the other assets transferred to Newco have a basis of $100 and a fair market value of $260, and S receives, in addition to Newco common stock, $15 of cash. Because S would recognize $15 of gain under section 351(b), the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $130 immediately before the transfer to Newco. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under §1.163-7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. S is then treated as transferring the new note to Newco for the Newco stock and cash received by S in the actual transaction. Because S has a basis of $130 in the new B note, S recognizes no gain or loss with respect to the transfer of the note in the section 351 exchange, and S recognizes $10 of gain with respect to the transfer of the other assets under section 351(b). After the transfer, the note has a $130 issue price and a $100 stated redemption price at maturity. The treatment of B's $30 of bond issuance premium under the new note is determined under §1.163-13.

(*4*) *Transferee loss subject to limitation*. The facts are the same as in paragraph (g)(7)(ii)(D)(*1*) of this section (*Example 4*), except that T is a member with a loss from a separate return limitation year that is subject to limitation under §1.1502-21(c) (a SRLY loss), and on January 1 of year 3, S transfers the assets and the B note to T in an exchange to which section 351 applies. Because the transferee, T, has a loss that is subject to a limitation, the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section (the exception in paragraph (g)(3)(i)(B)(*1*) of this section does not apply). Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under §1.163-7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. The treatment of B's $30 of bond issuance premium under the new note is determined under §1.163-13. S is then treated as transferring the new note to T as part of the section 351 exchange. Because T will have a fair market value basis in the reissued B note immediately after the exchange, T's intercompany item from the subsequent retirement of the B note will not reflect any of S's built-in gain (and the amount of T's SRLY loss that may be absorbed by such item will be limited to any appreciation in the B note accruing after the exchange).

(*5*) *Intercompany obligation transferred in section 332 transaction*. The facts are the same as paragraph (g)(7)(ii)(D)(*1*) of this section (*Example 4*), except that S transfers the B note to P in complete liquidation under section 332. Because the transaction is an exchange to which section 332 and section 337(a) applies, and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(E) *Example 5. Assumption of intercompany obligation*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. The note is fully recourse and is incurred for use in Business Z. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $110 reflecting a decline in prevailing market interest rates. Business Z has a fair market value of $95. On January 1 of year 3, B transfers all of the assets of Business Z and $15 of cash (substantially all of B's assets) to member T in exchange for the assumption by T of all of B's obligations under the note in a transaction in which gain or loss is recognized under section 1001. The terms and conditions of the note are not modified in connection with the sales transaction, the transaction does not result in a change in payment expectations, and no amount of income, gain, deduction, or loss is recognized by S, B, or T with respect to the note.

(*2*) *No deemed satisfaction and reissuance*. Because all of B's obligations under the B note are assumed by T in connection with the sale of the Business Z assets, the assignment of B's obligations under the note is not a triggering transaction under paragraph (g)(3)(i)(B)(*2*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(F) *Example 6. Extinguishment of intercompany obligation*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 20. The note is a security within the meaning of section 351(d)(2). As of January 1 of year 3, B has fully performed its obligations, but the fair market value of the B note is $130, reflecting a decline in prevailing market interest rates, and S transfers the note to B in exchange for $130 of B stock in a transaction to which both section 351 and section 354 applies.

(*2*) *No deemed satisfaction and reissuance*. As a result of the satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under §1.163-7(c). Although the transfer of the B note is a transaction to which both section 351 and section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to either section 351(a) or section 354, and therefore, S has a $30 gain under section 1001. Because the note is extinguished in a transaction in which the adjusted issue price of the note is equal to the creditor's basis in the note, and the debtor's and creditor's items offset in amount, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*5*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. Under paragraph (g)(4)(i)(D) of this section, section 108(e)(7) does not apply upon the extinguishment of the B note, and therefore, the B stock received by S in the exchange will not be treated as section 1245 property.

(G) *Example 7. Exchange of intercompany obligations*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 20. As of January 1 of year 3, B has fully performed its obligations and, pursuant to a recapitalization to which section 368(a)(1)(E) applies, B issues a new note to S in exchange for the original B note. The new B note has an issue price, stated redemption price at maturity, and stated principal amount of $100, but contains terms that differ sufficiently from the terms of the original B note to cause a realization event under §1.1001-3. The original B note and the new B note are both securities (within the meaning of section 354(a)(1)).

(*2*) *No deemed satisfaction and reissuance*. Because the original B note is extinguished in exchange for a newly issued B note and the issue price of the new B note is equal to both the adjusted issue price of the original B note and S's basis in the original B note, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*6*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. B has neither income from discharge of indebtedness under section 108(e)(10) nor a deduction for repurchase premium under §1.163-7(c). Although the exchange of the original B note for the new B note is a transaction to which section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to section 354. Under section 1001, S has no gain or loss from the exchange of notes.

(H) *Example 8. Tax benefit rule*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value has depreciated, reflecting an increase in prevailing market interest rates. On that date, S transfers the B note to member T as part of an exchange for T common stock which is intended to qualify for nonrecognition treatment under section 351 but with a view to sell the T stock at a reduced gain. On February 1 of year 4, all of the stock of T is sold at a reduced gain.

(*2*) *Deemed satisfaction and reissuance*. Because the assignment of the B note does not occur within 12 months of the sale of T stock, paragraph (g)(3)(i)(B)(*1*)(*vi*) of this section does not apply to treat the assignment as a triggering transaction. However, because the assignment of the B note was engaged in with a view to shift built-in loss from the obligation in order to secure a tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(3)(i)(C) of this section, the assignment of the B note is a triggering transaction to which paragraph (g)(3)(ii) of this section applies. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account discharge of indebtedness income and S has a corresponding loss which is treated as ordinary loss. B is also treated as reissuing, immediately after the deemed satisfaction, a new note to S with an issue price and basis equal to its fair market value. S is then treated as transferring the new note to T as part of the section 351 exchange. Because S's basis in the T stock received with respect to the transferred B note is equal to its fair market value, S's gain with respect to the T stock will not reflect any of the built-in loss attributable to the B note. (This example does not address common law doctrines or other authorities that might apply to recharacterize the transaction or to otherwise affect the tax treatment of the transaction.)

(I) *Example 9. Issuance at off-market rate of interest*—(*1*) *Facts*. T is a member with a SRLY loss. T's sole shareholder, P, borrows an amount of cash from T in return for a P note that provides for a materially above market rate of interest. The P note is issued with a view to generate additional interest income to T over the term of the note to facilitate the absorption of T's SRLY loss.

(*2*) *With a view*. Because the P note is issued with a view to shift interest income from the off-market obligation in order to secure a tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(4)(iii) of this section, the intercompany obligation is treated, for all Federal income tax purposes, as originally issued for its fair market value so T is treated as purchasing the note at a premium. The difference between the amount loaned and the fair market value of the obligation is treated as transferred from P to T as a capital contribution at the time the note is issued. Throughout the term of the note, T takes into account interest income and bond premium and P takes into account interest deduction and bond issuance premium under generally applicable Internal Revenue Code sections. The adjustment under paragraph (g)(4)(iii) of this section is made without regard to the application of, and in lieu of any adjustment under, section 482 or 1274.

(J) *Example 10. Nonintercompany obligation becomes intercompany obligation*—(*1*) *Facts*. On January 1 of year 1, B borrows $100 from X in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $70, reflecting an increase in prevailing market interest rates. On January 1 of year 3, P buys all of X's stock. B is solvent within the meaning of section 108(d)(3).

(*2*) *Deemed satisfaction and reissuance*. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for $70 (determined under the principles of §1.108-2(f)(2)) immediately after it becomes an intercompany obligation. Both X's $30 capital loss (under section 1271(a)(1)) and B's $30 of discharge of indebtedness income (under §1.61-12) are taken into account in determining consolidated taxable income for year 3. Under paragraph (g)(6)(i)(B) of this section, the attributes of items resulting from the satisfaction are determined on a separate entity basis. *But see* section 382 and §1.1502-15 (as appropriate). B is also treated as reissuing a new note to X. The new note is an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X in the same manner as provided in paragraph (g)(7)(ii)(A)(*3*) of this section (*Example 1*).

(*3*) *Amortization of repurchase premium*. The facts are the same as in paragraph (g)(7)(ii)(J)(*1*) of this section (*Example 10*), except that on January 1 of year 3, the B note has a fair market value of $130 and rather than P purchasing the X stock, P purchases the B note from X by issuing its own note. The P note has an issue price, stated redemption price at maturity, stated principal amount, and fair market value of $130. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for $130 (determined under the principles of §1.108-2(f)(1)) immediately after it becomes an intercompany obligation. As a result of the deemed satisfaction of the note, P has no gain or loss and B has $30 of repurchase premium. Under paragraph (g)(6)(iii) of this section, B's $30 of repurchase premium from the deemed satisfaction is amortized by B over the term of the newly issued P note in the same manner as if it were original issue discount and the newly issued P note had been issued directly by B. B is also treated as reissuing a new note to P. The new note is an intercompany obligation, it has a $130 issue price and $100 stated redemption price at maturity, and the treatment of B's $30 of bond issuance premium under the new B note is determined under §1.163-13.

(*4*) *Election to file consolidated returns*. Assume instead that B borrows $100 from S during year 1, but the P group does not file consolidated returns until year 3. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied and reissued as a new note immediately after the note becomes an intercompany obligation. The satisfaction and reissuance are deemed to occur on January 1 of year 3, for the fair market value of the obligation (determined under the principles of §1.108-2(f)(2)) at that time.

(K) *Example 11. Notional principal contracts*—(*1*) *Facts*. On April 1 of year 1, M1 enters into a contract with counterparty M2 under which, for a term of five years, M1 is obligated to make a payment to M2 each April 1, beginning in year 2, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined by reference to LIBOR on the day each payment is due, multiplied by a $1,000 notional principal amount. M2 is obligated to make a payment to M1 each April 1, beginning in year 2, in an amount equal to 8 percent multiplied by the same notional principal amount. LIBOR is 7.80 percent on April 1 of year 2, and therefore, M2 owes $2 to M1.

(*2*) *Matching rule*. Under §1.446-3(d), the net income (or net deduction) from a notional principal contract for a taxable year is included in (or deducted from) gross income. Under §1.446-3(e), the ratable daily portion of M2's obligation to M1 as of December 31 of year 1 is $1.50 ($2 multiplied by 275/365). Under the matching rule, M1's net income for year 1 of $1.50 is taken into account to reflect the difference between M2's net deduction of $1.50 taken into account and the $0 recomputed net deduction. Similarly, the $.50 balance of the $2 of net periodic payments made on April 1 of year 2 is taken into account for year 2 in M1's and M2's net income and net deduction from the contract. In addition, the attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. (Although M1 is the selling member with respect to the payment on April 1 of year 2, it might be the buying member in a subsequent period if it owes the net payment.)

(*3*) *Dealer*. The facts are the same as in paragraph (g)(7)(ii)(K)(*1*) of this section (*Example 11*), except that M2 is a dealer in securities, and the contract with M1 is not inventory in the hands of M2. Under section 475, M2 must mark its securities to fair market value at year-end. Assume that under section 475, M2's loss from marking to fair market value the contract with M1 is $10. Because M2 realizes an amount of loss from the mark to fair market value of the contract, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, M2 is treated as making a $10 payment to M1 to terminate the contract immediately before a new contract is treated as reissued with an up-front payment by M1 to M2 of $10. M1's $10 of income from the termination payment is taken into account under the matching rule to reflect M2's deduction under §1.446-3(h). The attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. Accordingly, M1's income is treated as ordinary income. Under §1.446-3(f), the deemed $10 up-front payment by M1 to M2 in connection with the issuance of a new contract is taken into account over the term of the new contract in a manner reflecting the economic substance of the contract (for example, allocating the payment in accordance with the forward rates of a series of cash-settled forward contracts that reflect the specified index and the $1,000 notional principal amount). (The timing of taking items into account is the same if M1, rather than M2, is the dealer subject to the mark-to-market requirement of section 475 at year-end. However in this case, because the attributes of the corresponding deduction control the attributes of the intercompany income, M1's income from the deemed termination payment from M2 might be ordinary or capital). Under paragraph (g)(3)(ii)(A) of this section, section 475 does not apply to mark the notional principal contract to fair market value after its deemed satisfaction and reissuance.

* * * * *

(l) * * *

(6) *Applicability date regarding paragraph (f)(7)(iv) of this section (Example 4)*. Paragraph (f)(7)(iv) of this section (*Example 4*) applies to transactions occurring on or after December 18, 2009.

* * * * *

(8) *Election to apply paragraph (f)(5)(ii) of this section to an intercompany transaction.* Paragraph (f)(5)(ii)(E) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007.

(9) *Election to reduce basis of parent stock under paragraph (f)(6) of this section.* Paragraph (f)(6)(i)(C)(*2*) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007.

(10) *Certain qualified stock dispositions.* Paragraph (f)(5)(ii)(C) of this section applies to any qualified stock disposition (as defined in §1.336-1(b)(6)) for which the disposition date (as defined in §1.336-1(b)(8)) is on or after May 15, 2013.

Par. 19. Section 1.1502-17 is amended by revising and republishing paragraphs (a) and (e) to read as follows:

§1.1502-17 Methods of accounting.

(a) *General rule*. The method of accounting to be used by each member of the group is determined in accordance with the provisions of section 446 as if such member filed a separate return.

* * * * *

(e) *Effective dates*. Paragraph (b) of this section applies to changes in method of accounting effective for years beginning on or after July 12, 1995. Paragraphs (c) and (d) of this section apply with respect to acquisitions occurring or activities undertaken in years beginning on or after July 12, 1995.

§1.1502-18 [Removed]

Par. 20. Section 1.1502-18 is removed.

Par. 21. Section 1.1502-21 is amended by:

a. Revising paragraphs (b)(3)(i) and (b)(4);

b. Removing and reserving paragraph (d); and

c. Revising paragraphs (h)(6) and (8).

The revisions read as follows:

§1.1502-21 Net operating losses.

* * * * *

(b) * * *

(3) * * *

(i) *In general*. A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraphs (b)(4) and (5) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement titled "THIS IS AN ELECTION UNDER §1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. The election may be made in an unsigned statement.

* * * * *

(4) *General split-waiver election*. If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement titled "THIS IS AN ELECTION UNDER §1.1502-21(b)(4) TO WAIVE THE PRE–[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members]." The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. The election may be made in an unsigned statement.

* * * * *

(h) * * *

(6) *Certain prior periods*. Paragraphs (b)(1), (b)(2)(iv)(A), (b)(2)(iv)(B)(1), and (c)(2)(vii) of this section apply to taxable years for which the due date of the original return (without regard to extensions) is after March 21, 2005.

* * * * *

(8) *Losses treated as expired under §1.1502-35(f)(1)*. For rules regarding losses treated as expired under §1.1502-35(f) on or after March 10, 2006, *see* §1.1502-21(b)(3)(v) as contained in 26 CFR part 1 in effect on April 1, 2006.

* * * * *

§1.1502-22 [Amended]

Par. 22. Section 1.1502-22 is amended by removing and reserving paragraph (d).

Par. 23. Section 1.1502-24 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§1.1502-24 Consolidated charitable contributions deduction.

(a) * * *

(2) The percentage limitation on the total charitable contribution deduction provided in section 170(b)(2)(A) applied to adjusted consolidated income as determined under paragraph (c) of this section.

* * * * *

(c) *Adjusted consolidated taxable income*. For purposes of this section, the adjusted consolidated taxable income of the group for any consolidated return year is the consolidated taxable income computed without regard to this section, section 243(a)(2) and (3), and §1.1502-26, and without regard to any consolidated net operating or net capital loss carrybacks to such year.

Par. 24. Section 1.1502-26 is amended by revising paragraphs (a) and (c) to read as follows:

§1.1502-26 Consolidated dividends received deduction.

(a) *In general.* The consolidated dividends received deduction for the taxable year is the lesser of—

(1) The aggregate of the deduction of the members of the group allowable under sections 243(a)(1), 245(a) and (b), and 250 (computed without regard to the limitations provided in section 246(b)), or

(2) The aggregate amount described in section 246(b), determined by substituting, wherever it appears—

(i) The term *consolidated taxable income* for *taxable income*,

(ii) The term *consolidated net operating loss* for *net operating loss*, and

(iii) The term *consolidated net capital loss* for *capital loss*.

* * * * *

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

(1) *Example 1.* (i) Corporations P, S, and S-1 filed a consolidated return for the calendar year 2023 showing consolidated taxable income of $100,000 (determined without regard to the consolidated net operating loss deduction, and the consolidated dividends received deduction). These corporations received dividends during such year from less than 20-percent owned domestic corporations as follows:

Table 1 to Paragraph (c)(1)(i)

Corporation	Dividends
P	$6,000
S	$10,000
S-1	$34,000
Total	$50,000

(ii) The dividends received deduction allowable to each member under section 243(a)(1) (computed without regard to the limitation in section 246(b)) is as follows: P has $3,000 (50 percent of $6,000), S has $5,000 (50 percent of $10,000), and S-1 has $17,000 (50 percent of $34,000), or a total of $25,000. Since $25,000 is less than $50,000 (50 percent of $100,000), the consolidated dividends received deduction is $25,000.

(2) *Example 2.* Assume the same facts as in paragraph (c)(1)(i) of this section (*Example 1*), except that consolidated taxable income (computed without regard to the consolidated net operating loss deduction and the consolidated dividends received deduction) was $40,000. The aggregate of the dividends received deductions, $42,500, computed without regard to section 246(b), results in a consolidated net operating loss of $2,500. *See* section 172(d)(5). Therefore, paragraph (a)(2) of this section does not apply and the consolidated dividends received deduction is $42,500.

§1.1502-27 [Removed]

Par. 25. Section 1.1502-27 is removed.

Par. 26. Section 1.1502-32 is amended by:

a. Revising paragraphs (b)(4)(v) and (vii).

b. Revising and republishing paragraphs (b)(5), (h)(2)(i), and (h)(5) through (8).c. Redesignating paragraph (j) as paragraph (h)(10) and revising newly designated paragraph (h)(10).

d. Removing paragraph (k).

The revisions read as follows:

§1.1502-32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under §1.1502-20(i)(2) is made. See* paragraph (b)(4)(v) of this section as contained in 26 CFR part 1 revised as of April 1, 2005.

* * * * *

(vii) *Special rules for amending waiver of loss carryovers from separate return limitation year relating to the acquisition of a subsidiary in a transaction subject to §1.1502-20. See* paragraph (b)(4)(vii) of this section as contained in 26 CFR part 1 revised as of April 1, 2005.

(5) *Examples*—(i) *In general*. For purposes of the examples in this section, unless otherwise stated, M owns all of the only class of S's stock, the stock is owned for the entire year, S owns no stock of lower-tier members, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, preferred stock is described in section 1504(a)(4), all transactions are between unrelated persons, and tax liabilities are disregarded.

(ii) *Stock basis adjustments*. The principles of this paragraph (b) are illustrated by the following examples.

(A) *Example 1. Taxable income*—(*1*) *Current taxable income*. For Year 1, the M group has $100 of taxable income when determined by including only S's items of income, gain, deduction, and loss taken into account. Under paragraph (b)(1) of this section, M's basis in S's stock is adjusted under this section as of the close of Year 1. Under paragraph (b)(2) of this section, M's basis in S's stock is increased by the amount of the M group's taxable income determined by including only S's items taken into account. Thus, M's basis in S's stock is increased by $100 as of the close of Year 1.

(*2*) *Intercompany gain that is not taken into account*. The facts are the same as in paragraph (b)(5)(ii)(A)(*1*) of this section (*Example 1*), except that S also sells property to another member at a $25 gain in Year 1, the gain is deferred under §1.1502-13 and taken into account in Year 3, and M sells 10% of S's stock to nonmembers in Year 2. Under paragraph (b)(3)(i) of this section, S's deferred gain is not additional taxable income for Year 1 or 2 because it is not taken into account in determining the M group's consolidated taxable income for either of those years. The deferred gain is not tax-exempt income under paragraph (b)(3)(ii) of this section because it is not permanently excluded from S's gross income. The deferred gain does not result in a basis adjustment until Year 3, when it is taken into account in determining the M group's consolidated taxable income. Consequently, M's basis in the S shares sold is not increased to reflect S's gain from the intercompany sale of the property. In Year 3, the deferred gain is taken into account, but the amount allocable to the shares sold by M does not increase their basis because these shares are held by nonmembers.

(*3*) *Intercompany gain taken into account*. The facts are the same as in paragraph (b)(5)(ii)(A)(*2*) of this section (*Example 1*), except that M sells all of S's stock in Year 2 (rather than only 10%). Under §1.1502-13, S takes the $25 gain into account immediately before S becomes a nonmember. Thus, M's basis in S's stock is increased to reflect S's gain from the intercompany sale of the property.

(B) *Example 2. Tax loss*—(*1*) *Current absorption*. For Year 2, the M group has a $50 consolidated net operating loss when determined by taking into account only S's items of income, gain, deduction, and loss. S's loss is absorbed by the M group in Year 2, offsetting M's income for that year. Under paragraph (b)(3)(i)(A) of this section, because S's loss is absorbed in the year it arises, M has a $50 negative adjustment with respect to S's stock. Under paragraph (b)(2) of this section, M reduces its basis in S's stock by $50. Under paragraph (a)(3)(ii) of this section, if the decrease exceeds M's basis in S's stock, the excess is M's excess loss account in S's stock.

(*2*) *Interim determination from stock sale*. The facts are the same as in paragraph (b)(5)(ii)(B)(*1*) of this section (*Example 2*), except that S's Year 2 loss arises in the first half of the calendar year, M sells 50% of S's stock on July 1 of Year 2, and M's income for Year 2 does not arise until after the sale of S's stock. M's income for Year 2 (exclusive of the sale of S's stock) is offset by S's loss, even though the income arises after the stock sale, and no loss remains to be apportioned to S. *See* §§1.1502-11 and 1.1502-21(b). Under paragraph (b)(3)(i)(A) of this section, because S's $50 loss is absorbed in the year it arises, it reduces M's basis in the S shares sold by $25 immediately before the stock sale. Because S becomes a nonmember, the loss also reduces M's basis in the retained S shares by $25 immediately before S becomes a nonmember.

(*3*) *Loss carryback*. The facts are the same as in paragraph (b)(5)(ii)(B)(*1*) of this section (*Example 2*), except that M has no income or loss for Year 2, S's $50 loss is carried back and absorbed by the M group in Year 1 (offsetting the income of M or S), and the M group receives a $17 tax refund in Year 2 that is paid to S. Under paragraph (b)(3)(i)(B) of this section, because the $50 loss is carried back and absorbed in Year 1, it is treated as a tax loss for Year 2 (the year in which it arises). Under paragraph (b)(3)(ii) of this section, the refund is treated as tax-exempt income of S. Under paragraph (b)(3)(iv)(C) of this section, the tax- exempt income is taken into account in Year 2 because that is the year it would be taken into account under S's method of accounting if it were subject to Federal income taxation. Thus, under paragraph (b)(2) of this section, M reduces its basis in S's stock by $33 as of the close of Year 2 (the $50 tax loss, less the $17 tax refund).

(*4*) *Loss carryforward*. The facts are the same as in paragraph (b)(5)(ii)(B)(*1*) of this section (*Example 2*), except that M has no income or loss for Year 2, and S's loss is carried forward and absorbed by the M group in Year 3 (offsetting the income of M or S). Under paragraph (b)(3)(i)(A) of this section, the loss is not treated as a tax loss under paragraph (b)(2) of this section until Year 3.

(C) *Example 3. Tax-exempt income and noncapital, nondeductible expenses*—(*1*) *Facts*. For Year 1, the M group has $500 of consolidated taxable income. However, the M group has a $100 consolidated net operating loss when determined by including only S's items of income, gain, deduction, and loss taken into account. Also for Year 1, S has $80 of interest income that is permanently excluded from gross income under section 103, and S incurs $60 of related expense for which a deduction is permanently disallowed under section 265.

(*2*) *Analysis*. Under paragraph (b)(3)(i)(A) of this section, S has a $100 tax loss for Year 1. Under paragraph (b)(3)(ii)(A) of this section, S has $80 of tax-exempt income. Under paragraph (b)(3)(iii)(A) of this section, S has $60 of noncapital, nondeductible expense. Under paragraph (b)(3)(iv)(C) of this section, the tax-exempt income and noncapital, nondeductible expense are taken into account in Year 1 because that is the year they would be taken into account under S's method of accounting if they were subject to Federal income taxation. Thus, under paragraph (b) of this section, M reduces its basis in S's stock as of the close of Year 1 by an $80 net amount (the $100 tax loss, less $80 of tax-exempt income, plus $60 of noncapital, nondeductible expenses).

(D) *Example 4. Discharge of indebtedness*—(*1*) *Facts*. M forms S on January 1 of Year 1 and S borrows $200. During Year 1, S's assets decline in value and the M group has a $100 consolidated net operating loss. Of that amount, $10 is attributable to M and $90 is attributable to S under the principles of §1.1502-21(b)(2)(iv). None of the loss is absorbed by the group in Year 1, and S is discharged from $100 of indebtedness at the close of Year 1. M has a $0 basis in the S stock. M and S have no attributes other than the consolidated net operating loss. Under section 108(a), S's $100 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and §1.1502-28, the consolidated net operating loss is reduced to $0.

(*2*) *Analysis*. Under paragraph (b)(3)(iii)(A) of this section, the reduction of $90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense in Year 1 because that loss is permanently disallowed by section 108(b) and §1.1502-28. Under paragraph (b)(3)(ii)(C)(*1*) of this section, all $100 of S's discharge of indebtedness income is treated as tax-exempt income in Year 1 because the discharge results in a $100 reduction to the consolidated net operating loss. Consequently, the loss and the cancellation of the indebtedness result in a net positive $10 adjustment to M's basis in its S stock.

(*3*) *Insufficient attributes*. The facts are the same as in paragraph (b)(5)(ii)(D)(*1*) of this section (*Example 4*), except that S is discharged from $120 of indebtedness at the close of Year 1. Under section 108(a), S's $120 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and §1.1502-28, the consolidated net operating loss is reduced by $100 to $0 after the determination of tax for Year 1. Under paragraph (b)(3)(iii)(A) of this section, the reduction of $90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense. Under paragraph (b)(3)(ii)(C)(*1*) of this section, only $100 of the discharge is treated as tax-exempt income because only that amount is applied to reduce tax attributes. The remaining $20 of discharge of indebtedness income excluded from gross income under section 108(a) has no effect on M's basis in S's stock.

(*4*) *Purchase price adjustment*. Assume instead that S buys land in Year 1 in exchange for S's $100 purchase money note (bearing interest at a market rate of interest in excess of the applicable Federal rate, and providing for a principal payment at the end of Year 10), and the seller agrees with S in Year 4 to discharge $60 of the note as a purchase price adjustment to which section 108(e)(5) applies. S has no discharge of indebtedness income that is treated as tax-exempt income under paragraph (b)(3)(ii) of this section. In addition, the $60 purchase price adjustment is not a noncapital, nondeductible expense under paragraph (b)(3)(iii) of this section. A purchase price adjustment is not equivalent to a discharge of indebtedness that is offset by a deduction or loss. Consequently, the purchase price adjustment results in no net adjustment to M's basis in S's stock under paragraph (b) of this section.

(E) *Example 5. Distributions*—(*1*) *Amounts declared and distributed*. For Year 1, the M group has $120 of consolidated taxable income when determined by including only S's items of income, gain, deduction, and loss taken into account. S declares and makes a $10 dividend distribution to M at the close of Year 1. Under paragraph (b) of this section, M increases its basis in S's stock as of the close of Year 1 by a $110 net amount ($120 of taxable income, less a $10 distribution).

(*2*) *Distributions in later years*. The facts are the same as in paragraph (b)(5)(ii)(E)(*1*) of this section (*Example 5*), except that S does not declare and distribute the $10 until Year 2. Under paragraph (b) of this section, M increases its basis in S's stock by $120 as of the close of Year 1, and decreases its basis by $10 as of the close of Year 2. (If M were also a subsidiary, the basis of its stock would also be increased in Year 1 to reflect M's $120 adjustment to basis of S's stock; the basis of M's stock would not be changed as a result of S's distribution in Year 2, because M's $10 of tax-exempt dividend income under paragraph (b)(3)(ii) of this section would be offset by the $10 negative adjustment to M's basis in S's stock for the distribution.)

(*3*) *Amounts declared but not distributed*. The facts are the same as in paragraph (b)(5)(ii)(E)(*1*) of this section (*Example 5*), except that, during December of Year 1, S declares (and M becomes entitled to) another $70 dividend distribution with respect to its stock, but M does not receive the distribution until after it sells all of S's stock at the close of Year 1. Under §1.1502-13(f)(2)(iv), S is treated as making a $70 distribution to M at the time M becomes entitled to the distribution. (If S is distributing an appreciated asset, its gain under section 311 is also taken into account under paragraph (b)(3)(i) of this section at the time M becomes entitled to the distribution.) Consequently, under paragraph (b) of this section, M increases its basis in S's stock as of the close of Year 1 by only a $40 net amount ($120 of taxable income, less two distributions totaling $80). Any further adjustments after S ceases to be a member and the $70 distribution is made would be duplicative, because the stock basis has already been adjusted for the distribution. Accordingly, the distribution will not result in further adjustments or gain, even if the distribution is a payment to which section 301(c)(2) or (3) applies.

(F) *Example 6. Reorganization with boot*—(*1*) *Facts*. M owns all the stock of S and T. M owns ten shares of the same class of common stock of S and ten shares of the same class of common stock of T. The fair market value of each share of S stock is $10 and the fair market value of each share of T stock is $10. On January 1 of Year 1, M has a $5 basis in each of its ten shares of S stock and a $10 basis in each of its ten shares of T stock. S and T have no items of income, gain, deduction, or loss for Year 1. S and T each have substantial earnings and profits. At the close of Year 1, T merges into S in a reorganization described in section 368(a)(1)(A) (and in section 368(a)(1)(D)). M receives no additional S stock, but does receive $10 which is treated as received by M in a separate transaction occurring immediately after the merger of T into S.

(*2*) *Analysis*. The merger of T into S is a transaction to which §1.1502-13(f)(3) applies. Under §§1.1502-13(f)(3) and 1.358-2(a)(2)(iii), M is deemed to receive ten additional shares of S stock with a total fair market value of $100 (the fair market value of the T stock surrendered by M). Under §1.358-2(a)(2)(i), M will have a basis of $10 in each share of S stock deemed received in the reorganization. Under §1.358-2(a)(2)(iii), M is deemed to surrender all twenty shares of its S stock in a recapitalization under section 368(a)(1)(E) in exchange for the ten shares of S stock, the number of shares of S stock held by M immediately after the transaction. Thus, under §1.358-2(a)(2)(i), M has five shares of S stock each with a basis of $10 and five shares of S stock each with a basis of $20. The $10 M received is treated as a dividend distribution under section 301 and, under paragraph (b)(3)(v) of this section, the $10 is a distribution to which paragraph (b)(2)(iv) of this section applies. Accordingly, M's total basis in the S stock is decreased by the $10 distribution.

(G) *Example 7. Tiering up of basis adjustments*. M owns all of S's stock, and S owns all of T's stock. For Year 1, the M group has $100 of consolidated taxable income when determined by including only T's items of income, gain, deduction, and loss taken into account, and $50 of consolidated taxable income when determined by including only S's items taken into account. S increases its basis in T's stock by $100 under paragraph (b) of this section. Under paragraph (a)(3) of this section, this $100 basis adjustment is taken into account in determining M's adjustments to its basis in S's stock. Thus, M increases its basis in S's stock by $150 under paragraph (b) of this section.

(H) *Example 8. Allocation of items*—(*1*) *Acquisition in mid-year*. M is the common parent of a consolidated group, and S is an unaffiliated corporation filing separate returns on a calendar-year basis. M acquires all of S's stock and S becomes a member of the M group on July 1 of Year 1. For the entire calendar Year 1, S has $100 of ordinary income and under §1.1502-76(b) $60 is allocated to the period from January 1 to June 30 and $40 to the period from July 1 to December 31. Under paragraph (b) of this section, M increases its basis in S's stock by $40.

(*2*) *Sale in mid-year*. The facts are the same as in paragraph (b)(5)(ii)(H)(*1*) of this section (*Example 8*), except that S is a member of the M group at the beginning of Year 1 but ceases to be a member on June 30 as a result of M's sale of S's stock. Under paragraph (b) of this section, M increases its basis in S's stock by $60 immediately before the stock sale. (M's basis increase would be the same if S became a nonmember because S issued additional shares to nonmembers.)

(3) Absorption of loss carryovers. Assume instead that S is a member of the M group at the beginning of Year 1 but ceases to be a member on June 30 as a result of M's sale of S's stock, and a $100 consolidated net operating loss attributable to S is carried over by the M group to Year 1. The consolidated net operating loss may be apportioned to S for its first separate return year only to the extent not absorbed by the M group during Year 1. Under paragraph (b)(3)(i) of this section, if the loss is absorbed by the M group in Year 1, whether the offsetting income arises before or after M's sale of S's stock, the absorption of the loss carryover is included in the determination of S's taxable income or loss for Year 1. Thus, M's basis in S's stock is adjusted under paragraph (b) of this section to reflect any absorption of the loss by the M group.

(I) *Example 9. Gross-ups*—(*1*) *Facts*. M owns all of the stock of S, and S owns all of the stock of T, a newly formed controlled foreign corporation that is not a passive foreign investment company. In Year 1, T has $100 of subpart F income and pays $34 of foreign income tax, leaving T with $66 of earnings and profits. The M group has $100 of consolidated taxable income when determined by taking into account only S's items (the inclusion under section 951(a), taking into account the section 78 gross-up). As a result of the section 951(a) inclusion, S increases its basis in T's stock by $66 under section 961(a).

(*2*) *Analysis*. Under paragraph (b)(3)(i) of this section, S has $100 of taxable income. Under paragraph (b)(3)(iii)(B) of this section, the $34 gross-up for taxes paid by T that S is treated as having paid is a noncapital, nondeductible expense (whether or not any corresponding amount is claimed by the M group as a tax credit). Thus, M increases its basis in S's stock under paragraph (b) of this section by the net adjustment of $66.

(*3*) *Subsequent distribution*. The facts are the same as in paragraph (b)(5)(ii)(I)(*1*) of this section (*Example 9*), except that T distributes its $66 of earnings and profits in Year 2. The $66 distribution received by S is excluded from S's income under section 959(a) because the distribution represents earnings and profits attributable to amounts that were included in S's income under section 951(a) for Year 1. In addition, S's basis in T's stock is decreased by $66 under section 961(b). The excluded distribution is not tax-exempt income under paragraph (b)(3)(ii) of this section because of the corresponding reduction to S's basis in T's stock. Consequently, M's basis in S's stock is not adjusted under paragraph (b) of this section for Year 2.

(J) *Example 10. Recapture of tax-exempt items*—(*1*) *Facts*. S is a life insurance company. For Year 1, the M group has $200 of consolidated taxable income, determined by including only S's items of income, gain, deduction, and loss taken into account (including a $300 small company deduction under section 806). In addition, S has $100 of tax-exempt interest income, $60 of which is S's company share. The remaining $40 of tax-exempt income is the policyholders' share that reduces S's deduction for increase in reserves.

(*2*) *Tax-exempt items generally*. Under paragraph (b)(3)(i) of this section, S has $200 of taxable income for Year 1. Also for Year 1, S has $100 of tax-exempt income under paragraph (b)(3)(ii)(A) of this section, and another $300 is treated as tax-exempt income under paragraph (b)(3)(ii)(B) of this section because of the deduction under section 806. Under paragraph (b)(3)(iii) of this section, S has $40 of noncapital, nondeductible expenses for Year 1 because S's deduction under section 807 for its increase in reserves has been permanently reduced by the $40 policyholders' share of the tax-exempt interest income. Thus, M increases its basis in S's stock by $560 under paragraph (b) of this section.

(*3*) *Recapture*. Assume instead that S is a property and casualty company and, for Year 1, S accrues $100 of estimated salvage recoverable under section 832. Of this amount, $87 (87% of $100) is excluded from gross income because of the "fresh start" provisions of Sec. 11305(c) of P.L. 101-508 (the Omnibus Budget Reconciliation Act of 1990). Thus, S has $87 of tax-exempt income under paragraph (b)(3)(ii)(A) of this section that increases M's basis in S's stock for Year 1. (S also has $13 of taxable income over the period of inclusion under section 481.) In Year 5, S determines that the $100 salvage recoverable was overestimated by $30 and deducts $30 for the reduction of the salvage recoverable. However, S has $26.10 (87% of $30) of taxable income in Year 5 due to the partial recapture of its fresh start. Because S has no basis corresponding to this income, S is treated under paragraph (b)(3)(iii)(B) of this section as having a $26.10 noncapital, nondeductible expense in Year 5. This treatment is necessary to reflect the elimination of the erroneous fresh start in S's stock basis and causes a decrease in M's basis in S's stock by $30 for Year 5 (a $3.90 taxable loss and a $26.10 special adjustment).

* * * * *

(h) * * *

(2) * * *

(i) *In general*. If M disposes of stock of S in a consolidated return year beginning before January 1, 1995, the amount of M's income, gain, deduction, or loss, and the basis reflected in that amount, are not redetermined under this section.

* * * * *

(5) *Continuing basis reductions for certain deconsolidated subsidiaries*. If a subsidiary ceases to be a member of a group in a consolidated return year beginning before January 1, 1995, and its basis was subject to reduction under §1.1502-32T or §1.1502-32(g) as contained in the 26 CFR part 1 edition revised as of April 1, 1994, its basis remains subject to reduction under those principles. For example, if S ceased to be a member in 1990, and M's basis in any retained S stock was subject to a basis reduction account, the basis remains subject to reduction. Similarly, if an election could be made to apply §1.1502-32T instead of §1.1502-32(g), the election remains available. However, §§1.1502-32T and 1.1502-32(g) do not apply as a result of a subsidiary ceasing to be a member in tax years beginning on or after January 1, 1995.

(6) *Loss suspended under §1.1502-35(c) or disallowed under §1.1502-35(g)(3)(iii)*. Paragraphs (a)(2), (b)(3)(iii)(C) and (D), and (b)(4)(vi) of this section are applicable on and after March 10, 2006.

(7) *Rules related to discharge of indebtedness income excluded from gross income*. Paragraphs (b)(1)(ii), (b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c) of this section apply with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) after March 21, 2005. However, groups may apply those provisions with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) on or before March 21, 2005, and after August 29, 2003.

(8) *Determination of stock basis in reorganization with boot*. Paragraph (b)(5)(ii)(F) of this section (*Example 6*) applies only with respect to determinations of the basis of the stock of a subsidiary on or after January 23, 2006.

* * * * *

(10) *Election to treat loss carryover as expiring.* Paragraph (b)(4)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, *see* §1.1502-32T as contained in 26 CFR part 1 in effect on April 1, 2007.

* * * * *

Par. 27. Section 1.1502-34 is revised to read as follows:

§1.1502-34 Special aggregate stock ownership rules.

(a) *Determination of stock ownership.* For purposes of the consolidated return regulations, in determining the stock ownership of a member of a group in another corporation (issuing corporation) for purposes of determining the application of section 165(g)(3)(A), 332(b)(1), 351(a), 732(f), or 904(f) in a consolidated return year, stock in the issuing corporation owned by all other members of the group is included. For the determination of whether a member of the group is an 80-percent distributee, *see* section 337(c) (providing that, for purposes of section 337, the determination of whether any corporation is an 80-percent distributee is made without regard to any consolidated return regulation).

(b) *Example regarding liquidation of member.* The following example illustrates the stock ownership aggregation rule set forth in paragraph (a) of this section.

(1) *Facts.* P wholly owns A, B, and C, each of which is a member of the P group. A, B, and C each owns 33 1/3 percent of the stock of D. D liquidates in a transaction purported to qualify under section 332.

(2) *Analysis.* For purposes of determining satisfaction of the 80-percent stock ownership requirement under section 332(b)(1), under the stock ownership aggregation rule set forth in paragraph (a) of this section: A is treated as owning all of the D stock owned by B and C; B is treated as owning all of the D stock owned by A and C; and C is treated as owning all of the D stock owned by A and B. Therefore, each of A, B, and C is treated as owning 100 percent of the stock of D and thus meeting the 80-percent stock ownership requirement for purposes of section 332. However, none of A, B, or C is treated as an 80-percent distributee for purposes of section 337. *See* section 337(c). Therefore, section 337(a) does not apply.

§1.1502-42 [Removed]

Par. 28. Section 1.1502-42 is removed.

Par. 29. Section 1.1502-43 is amended by revising paragraphs (b)(2)(iii) through (viii) and (e) to read as follows:

§1.1502-43 Consolidated accumulated earnings tax.

* * * * *

(b) * * *

(2) * * *

(iii) Under section 535(b)(3), the deduction determined under §1.1502-26 is not allowed.

(iv) Under section 535(b)(4), the consolidated net operating loss deduction described in §1.1502-21(a) is not allowed.

(v) Under section 535(b)(5), there is allowed as a deduction the consolidated net capital loss, determined under §1.1502-22(a).

(vi) Under section 535(b)(6), there is allowed as a deduction an amount equal to—

(A) The consolidated capital gain net income for the taxable year (determined under §1.1502-22(a) and without the consolidated net capital loss carryovers and carrybacks to the taxable year), minus

(B) The taxes attributable to such gain.

(vii) Under section 535(b)(7), the consolidated net capital loss carryovers and carrybacks are not allowed. *See* §1.1502-22(b).

(viii) Section 1.1502-15 does not apply.

* * * * *

(e) *Effective/applicability date*. This section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009.

Par. 30. Section 1.1502-44 is amended by revising paragraph (b) to read as follows:

§1.1502-44 Percentage depletion for independent producers and royalty owners.

* * * * *

(b) *Adjusted consolidated taxable income*. For purposes of this section, adjusted consolidated taxable income is an amount (not less than zero) equal to the group's consolidated taxable income determined without—

(1) Any depletion with respect to an oil or gas property (other than a gas property with respect to which the depletion allowance for all production is determined pursuant to section 613A(b)) for which percentage depletion would exceed cost depletion in the absence of the depletable quantity limitations contained in section 613A(c)(1) and (6) and the consolidated taxable income limitation contained in paragraph (a) of this section;

(2) Any consolidated net operating loss carryback to the consolidated return year under §1.1502-21; and

(3) Any consolidated net capital loss carryback to the consolidated return year under §1.1502-22.

* * * * *

Par. 31. Section 1.1502-45 is added to read as follows:

§1.1502-45 Limitation on losses to amount at risk.

(a) *In general*—(1) *Scope*. This section applies to a loss of any subsidiary if the common parent's stock meets the stock ownership requirement described in section 465(a)(1)(B).

(2) *Limitation on use of losses.* Except as provided in paragraph (a)(4) of this section, a loss from an activity of a subsidiary during a consolidated return year is includible in the computation of consolidated taxable income (or consolidated net operating loss) and consolidated capital gain net income (or consolidated net capital loss) only to the extent the loss does not exceed the amount that the parent is at risk in the activity at the close of that subsidiary's taxable year. In addition, the sum of a subsidiary's losses from all its activities is includible only to the extent that the parent is at risk in the subsidiary at the close of that year. Any excess may not be taken into account for the consolidated return year but will be treated as a deduction allocable to that activity of the subsidiary in the first succeeding taxable year.

(3) *Amount parent is at risk in subsidiary's activity.* The amount the parent is at risk in an activity of a subsidiary is the lesser of the amount the parent is at risk in the subsidiary, or the amount the subsidiary is at risk in the activity. These amounts are determined under paragraph (b) of this section and the principles of section 465. *See* section 465 and the regulations thereunder and the examples in paragraph (e) of this section.

(4) *Excluded activities.* The limitation on the use of losses in paragraph (a)(2) of this section does not apply to a loss attributable to an activity described in section 465(c)(4).

(5) *Substance over form.* Any transaction or arrangement between members (or between a member and a person that is not a member) which does not cause the parent to be economically at risk in an activity of a subsidiary will be treated in accordance with the substance of the transaction or arrangement notwithstanding any other provision of this section.

(b) *Rules for determining amount at risk*—(1) *Excluded amounts.* The amount a parent is at risk in an activity of a subsidiary at the close of the subsidiary's taxable year does not include any amount that would not be taken into account under section 465 were the subsidiary not a separate corporation. Thus, for example, if the amount a parent is at risk in the activity of a subsidiary is attributable to nonrecourse financing, the amount at risk is not more than the fair market value of the property (other than the subsidiary's stock or debt or assets) pledged as security.

(2) *Guarantees.* If a parent guarantees a loan by a person other than a member to a subsidiary, the loan increases the amount the parent is at risk in the activity of the subsidiary.

(c) *Application of section 465.* This section applies in a manner consistent with the provisions of section 465. Thus, for example, the recapture of losses provided in section 465(e) applies if the amount the parent is at risk in the activity of a subsidiary is reduced below zero.

(d) *Other consolidated return provisions unaffected.* This section limits only the extent to which losses of a subsidiary may be used in a consolidated return year. This section does not apply for other purposes, such as §§1.1502-32 and 1.1502-19, relating to investment in stock of a subsidiary and excess loss accounts, respectively. Thus, a loss which reduces a subsidiary's earnings and profits in a consolidated return year, but is disallowed as a deduction for the year by reason of this section, may nonetheless result in a negative adjustment to the basis of an owning member's stock in the subsidiary or create (or increase) an excess loss account.

(e) *Examples.* The provisions of this section may be illustrated by the examples in this paragraph (e). In each example, the stock ownership requirement of section 465(a)(1)(B) is met for the stock of the parent (P), and each affiliated group files a consolidated return on a calendar year basis and comprises only the members described.

(1) *Example 1.* In 2022, P forms S with a contribution of $200 in exchange for all of S's stock. During the year, S borrows $400 from a commercial lender and P guarantees $100 of the loan. S uses $500 of its funds to acquire a motion picture film. S incurs a loss of $120 for the year with respect to the film. At the close of 2022, the amount P is at risk

in S's activity is $300 ($200 contribution plus $100 guarantee). If S has no gain or loss in 2023, and there are no contributions from or distributions to P, at the close of 2023 P's amount at risk in S's activity will be $180.

(2) *Example 2.* P forms S-1 with a capital contribution of $1 on January 1, 2023. On February 1, 2023. S-1 borrows $100 with full recourse and contributes all $101 to its newly formed subsidiary S-2. S-2 uses the proceeds to explore for natural oil and gas resources. S-2 incurs neither gain nor loss from its explorations during the taxable year. As of December 31, 2023, P is at risk in the exploration activity of S-2 only to the extent of $1.

(f) *Applicability date.* This section applies to consolidated return years for which the due date of the income tax return (without regard to extensions) is after December 30, 2024.

Par. 32. Section 1.1502-47 is amended by revising and republishing paragraphs (a)(3), (b)(14)(iii), (c)(2)(ii), (h)(3)(i), (ii), and (x), (h)(4) introductory text, (h)(4)(ii) and (iii), (k), (l), and (m)(1)(i), (iv), and (v) to read as follows:

§1.1502-47 Consolidated returns by life-nonlife groups.

(a) * * *

(3) *Other provisions*. The provisions of the consolidated return regulations apply unless this section provides otherwise. Further, unless otherwise indicated in this section, a term used in this section has the same meaning as in sections 801-848.

(b) * * *

(14) * * *

(iii) *Example 3.* Since 2012, L has owned all the stock of L_1, which has owned all the stock of S_1, a nonlife insurance company. L_1 writes some accident and health insurance business. In 2018, L_1 transfers this business, and S_1 transfers some of its business, to a new nonlife insurance company, S_2, in a transaction described in section 351(a). The property transferred to S_2 by L_1 had a fair market value of $50 million. The property transferred by S_1 had a fair market value of $40 million. S_2 is ineligible for 2020 because the tacking rule in paragraph (b)(12)(v) of this section does not apply. The old corporations (L_1 and S_1) and the new corporation (S_2) do not all have the same tax character. *See* paragraph (b)(12)(v)(B) and (D) of this section. The result would be the same if L_1 transferred other property (for example, stock and securities) with the same value, rather than accident and health insurance contracts, to S_2.

* * * * *

(c) * * *

(2) * * *

(ii) *Special rule.* Notwithstanding the general rule, however, if the nonlife members in the group filed a consolidated return for the immediately preceding taxable year and had executed and filed a Form 1122 (or successor form) that is effective for the preceding year, then such members will be treated as if they filed a Form 1122 (or successor form) when they join in the filing of a consolidated return under section 1504(c)(2) and they will be deemed to consent to the regulations under this section. However, an affiliation schedule (Form 851, or any successor form) must be filed by the group and the life members must execute a Form 1122 (or successor form) in the manner prescribed in §1.1502-75(h)(2).

* * * * *

(h) * * *

(3) * * *

(i) *Separate return years.* The carryovers in paragraph (h)(2)(ii) of this section may include net operating losses and net capital losses of the nonlife members arising in separate return years, that may be carried over to a succeeding year under the principles (including limitations) of §§1.1502-21 and 1.1502-22. *But see* paragraph (h)(3)(ix) of this section.

(ii) *Capital loss*. Nonlife consolidated net capital loss sets off consolidated LICTI only to the extent of life consolidated capital gain net income (as determined under paragraph (g)(3) of this section) and this setoff applies before any nonlife consolidated net operating loss sets off consolidated LICTI.

* * * * *

(x) *Percentage limitation*. The offsetable nonlife consolidated net operating losses that may be set off against consolidated LICTI in a particular year may not exceed a percentage limitation. This limitation is the applicable percentage in section 1503(c)(1) of the lesser of two amounts—

(A) The first amount is the sum of the offsetable nonlife consolidated net operating losses under paragraph (h)(2) of this section that may serve in the particular year (determined without this limitation) as a setoff against consolidated LICTI.

(B) The second amount is consolidated LICTI in the particular year reduced by any nonlife consolidated net capital loss that sets off consolidated LICTI in that year.

* * * * *

(4) *Examples*. The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

* * * * *

(ii) *Example 2.* (A) The facts are the same as in paragraph (h)(4)(i) of this section (*Example 1*), except that, for 2021, S's separate net operating loss is $200. Assume further that L's consolidated LICTI is $200. Under paragraph (h)(3)(vi) of this section, the offsetable nonlife consolidated net operating loss is $100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section ($200), reduced by the separate net operating loss of I ($100)). The offsetable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is $35 (35 percent of the lesser of the offsetable $100 or consolidated LICTI of $200). *See* section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of $65, and I carries over a loss of $100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net operating loss ($200) less amount used in 2021 ($35)). Under paragraph (h)(2)(ii) of this section, the offsetable nonlife consolidated net operating loss that may be carried to 2022 is $65 ($100 minus $35). The facts and results are summarized in the following table.

Table 1 to Paragraph (h)(4)(ii)(A)

	Facts	Offsetable	Limit	Unused Loss
	(a)	(b)	(c)	(d)
P	100			
S	(200)	(100)		(65)
I	(100)			(100)
Nonlife subgroup	(200)	(100)	(100)	(165)
L	200		200	
35% of the lower of line 4(c) or 5(c)			35	
Unused offsetable loss				(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is $165 (line 5(a) minus line 6(c)).

(iii) *Example 3.* The facts are the same as in paragraph (h)(4)(ii) of this section (*Example 2*), with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of $50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is $100. Under paragraph (f)(2) of this section, $50 of the nonlife consolidated net operating loss carryover ($165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2022 is attributable to I, the ineligible nonlife member. Accordingly, the offsetable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is $65, the unused loss from 2021. The offsetable nonlife consolidated net operating loss in 2022 is $22.75 (35 percent of the lesser of the offsetable loss of $65 or consolidated LICTI of $100). Accordingly, under paragraph (e) of this section, consolidated taxable income is $77.25 (consolidated LICTI of $100 minus the offsetable loss of $22.75).

* * * * *

(k) *Preemption*. The rules in this section preempt any inconsistent rules in other sections of the consolidated return regulations. For example, the rules in paragraph (h)(3)(vi) of this section apply notwithstanding §1.1502-21.

(l) *Other consolidation principles*. The fact that this section treats the life and nonlife members as separate groups in computing, respectively, consolidated LICTI (or life consolidated net operating loss) and nonlife consolidated taxable income (or loss) does not affect the usual rules in the consolidated return regulations unless this section provides otherwise. Thus, the usual rules in §1.1502-13 (relating to intercompany transactions) apply to both the life and nonlife members by treating them as members of one affiliated group.

(m) * * *

(1) * * *

(i) File the applicable consolidated corporate income tax return: a Form 1120-L, *U.S. Life Insurance Company Income Tax Return*, where the common parent is a life insurance company; a Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*, where the common parent is an insurance company, other than a life insurance company; a Form 1120, *U.S. Corporation Income Tax Return*, where the common parent is any other type of corporation; or any successor form;

* * * * *

(iv) Report separately the nonlife consolidated taxable income or loss, determined under paragraph (f) of this section, on a Form 1120 or 1120-PC (or any successor forms) (whether filed by the common parent or as an attachment to the consolidated return), as the case may be, of all nonlife members of the consolidated group; and

(v) Report separately the consolidated Life Insurance Company Taxable Income or life consolidated net operating loss, on a Form 1120-L (or any successor form) (whether filed by the common parent or as an attachment to the consolidated return), of all life members of the consolidated group.

* * * * *

Par. 33. Section 1.1502-75 is amended by:

a. Revising and republishing paragraphs (b)(1) through (3), (c)(1)(i), and (c)(2)(i) and (ii);

b. Removing paragraph (d)(5); and

c. Revising and republishing paragraphs (h)(1) and (2).

The revisions read as follows:

§1.1502-75 Filing of consolidated returns.

* * * * *

(b) * * *

(1) *General rule*. The consent of a corporation referred to in paragraph (a)(1) of this section is made by such corporation joining in the making of the consolidated return for such year. A corporation is deemed to have joined in the making of such return for such year if it files a Form 1122 (or successor form) in the manner specified in paragraph (h)(2) of this section.

(2) *Consent under facts and circumstances*—(i) *In general*. If a member of the group fails to file Form 1122 (or successor form), the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination—

(A) Whether or not the income and deductions of the member were included in the consolidated return;

(B) Whether or not a separate return was filed by the member for that taxable year; and

(C) Whether or not the member was included in the affiliations schedule, Form 851 (or successor form).

(ii) *Treatment of member*. If the Commissioner determines that the member described in paragraph (b)(1)(i) of this section has joined in the making of the consolidated return, such member is treated as if it had filed a Form 1122 (or successor form) for such year for purposes of paragraph (h)(2) of this section.

(3) *Failure to consent due to mistake*. If any member has failed to join in the making of a consolidated return under either paragraph (b)(1) or (2) of this section, then the tax liability of each member of the group is determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, such member is treated as if it had filed a Form 1122 (or successor form) for such year for purposes of paragraph (h)(2) of this section, and thus joined in the making of the consolidated return for such year.

(c) * * *

(1) * * *

(i) *In general*. Notwithstanding that a consolidated return is required for a taxable year, the Commissioner, upon application by the common parent, may for good cause shown grant permission to a group to discontinue filing consolidated returns. Any such application must be made through a letter ruling request filed not later than the 90th day before the due date of the consolidated return for the taxable year (including extensions). In addition, if an amendment of the Code, or other law affecting the computation of tax liability, is enacted and the enactment is effective for a taxable year ending before or within 90 days after the date of enactment, then application for such a taxable year may be made not later than the 180th day after the date of enactment, and if the application is approved the permission to discontinue filing consolidated returns will apply to such taxable year notwithstanding that a consolidated return has already been filed for such year.

* * * * *

(2) * * *

(i) *Permission to all groups*. The Commissioner, in the Commissioner's discretion, may grant all groups permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all groups, relative to the filing of separate returns. Ordinarily, the permission to discontinue applies with respect to the taxable year of each group which includes the effective date of such an amendment.

(ii) *Permission to a class of groups*. The Commissioner, in the Commissioner's discretion, may grant a particular class of groups permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all such groups relative to the filing of separate returns. Ordinarily, the permission to discontinue applies with respect to the taxable year of each group within the class which includes the effective date of such an amendment.

* * * * *

(h) * * *

(1) *Consolidated return made by common parent or agent.* The consolidated return must be made on Form 1120, *U.S. Corporation Income Tax Return* (or any successor form), for the group by the common parent or the agent for the group as provided in §1.1502-77(c). The consolidated return, with Form 851, *Affiliations Schedule* (or any successor form), attached, must be filed with the service center with which the common parent would have filed a separate return.

(2) *Filing of Form 1122 for first year*. If, under the provisions of paragraph (a)(1) of this section, a group wishes to file a consolidated return for a taxable year, then a Form 1122 (*Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*) (or successor form) must be executed by each subsidiary. The group must attach either executed Forms 1122 (or successor forms) or unsigned copies of the completed Forms 1122 (or successor forms) to the consolidated return. If the group submits unsigned Forms 1122 (or successor forms) with its return, it must retain the signed originals in its records in the manner required by §1.6001–1(e). Form 1122 (or any successor form) is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

* * * * *

Par. 34. Section 1.1502-76 is amended by revising and republishing paragraphs (a), (b)(1)(ii)(A)(*2*), (b)(2)(v), (b)(6), (c)(3), and (d) to read as follows:

§1.1502-76 Taxable year of members of group.

(a) *Taxable year of members of group*. The consolidated return of a group must be filed on the basis of the common parent's taxable year, and each subsidiary must adopt the common parent's annual accounting period for the first consolidated return year for which the subsidiary's income is includible in the consolidated return. If any member is on a 52–53-week taxable year, the rule of the preceding sentence will, with the advance consent of the Commissioner, be deemed satisfied if the taxable years of all members of the group end within the same 7-day period. Any request for such consent must be requested at the time and in the manner that the Commissioner of Internal Revenue may prescribe by Internal Revenue Service forms and instructions or by publication in the Internal Revenue Bulletin (*see* §601.601(d)(2)(ii) of this chapter).

(b) * * *

(1) * * *

(ii) * * *

(A) * * *

(*2*) *Special rule for former S corporations*. If S becomes a member in a transaction other than in a qualified stock purchase for which an election under section 338(g) is made, and immediately before becoming a member an election under section 1362(a) was in effect, then S will become a member at the beginning of the day the termination of its S corporation election is effective. S's tax year ends for all Federal income tax purposes at the end of the preceding day.

* * * * *

(2) * * *

(v) *Acquisition of S corporation*. If a corporation is acquired in a transaction to which paragraph (b)(1)(ii)(A)(*2*) of this section applies, then paragraphs (b)(2)(ii) and (iii) of this section do not apply and items of income, gain, loss, deduction, and credit are assigned to each short taxable year on the basis of the corporation's normal method of accounting as determined under section 446.

* * * * *

(6) *Applicability date.* Except as provided in paragraphs (b)(1)(ii)(A)(*2*) and (b)(2)(v) of this section, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or after January 1, 1995.

(c) * * *

(3) *Examples*. The provisions of this paragraph (c) may be illustrated by the following examples:

(i) *Example 1*. Corporation P, which filed a separate return for the calendar year 2022, acquires all of the stock of corporation S as of the close of December 31, 2022. Corporation S reports its income on the basis of a fiscal year ending March 31. On July 15, 2023, the due date for the filing of a separate return by S (assuming no extensions of time), a consolidated return has not been filed for the group (P and S). On such date S may either file a return for the period April 1, 2022, through December 31, 2022, or it may file a return for the complete fiscal year ending March 31, 2023. If S files a return for the short period ending December 31, 2022, and if the group elects not to file a consolidated return for the calendar year 2023, S, on or before April 15, 2024 (the due date of P's return, assuming no extensions of time), must file a substituted return for the complete fiscal year ending March 31, 2023, in lieu of the return previously filed for the short period. Interest is computed from July 15, 2023. If, however, S files a return for the complete fiscal year ending March 31, 2023, and the group elects to file a consolidated return for the calendar year 2023, then S must file an amended return covering the period from April 1, 2022, through December 31, 2022, in lieu of the return previously filed for the complete fiscal year. Interest is computed from July 15, 2023.

(ii) *Example 2*. Assume the same facts as in paragraph (c)(3)(i) of this section (*Example 1*), except that corporation P acquires all of the stock of corporation S at the close of September 30, 2023, and P files a consolidated return for the group for 2023 on April 15, 2024 (not having obtained any extensions of time). Since a consolidated return has been filed on or before the due date (July 15, 2024) for the filing of the separate return for the taxable year ending March 31, 2024, the return of S for the short taxable year beginning April 1, 2023, and ending September 30, 2023, should be filed no later than April 15, 2024.

(d) *Applicability date*—(1) *Taxable years of members of group applicability date.* Paragraph (a) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

(2) *Election to ratably allocate items applicability date.* Paragraph (b)(2)(ii)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

§1.1502-77 [Amended]

Par. 35. Section 1.1502-77 is amended by:

1. Designating *Examples 1* through *15* in paragraph (g) as paragraphs (g)(1) through (15), respectively.

2. In paragraph (g), for each newly redesignated paragraph listed in the "Paragraph" column, removing the text indicated in the "Remove" column and adding in its place the text indicated in the "Add" column:

Paragraph	Remove	Add
(g)(2)(i)	Example 1	paragraph (g)(1)(i) of this section (*Example* 1)
(g)(4)(i)	*Example 3*	paragraph (g)(3)(i) of this section (*Example* 3)
(g)(5)(i)	*Example 4*	paragraph (g)(4) of this section (*Example* 4)
(g)(11)(i)(B)(*1*)	His	the Commissioner's
(g)(11)(ii)(A)	paragraph (i)(A) of this *Example 11*	paragraph (g)(11)(i)(A) of this section
(g)(12)(i)	paragraph (ii)(A) of *Example 11*	paragraph (g)(11)(ii)(A) of this section (*Example 1*1)
(g)(13)(i)	March 15	April 15

Par. 36. Section 1.1502-77A is amended by revising and republishing paragraph (d) to read as follows:

§1.1502-77A Common parent agent for subsidiaries applicable for consolidated return years beginning before June 28, 2002.

* * * * *

(d) *Effect of dissolution of common parent corporation*. If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it must forthwith notify the Commissioner of such fact and designate, subject to the approval of the Commissioner, another member to act as agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, or the designation is not approved by the Commissioner, the remaining members may, subject to the approval of the Commissioner, designate another member to act as such agent, and notice of such designation must be given to the Commissioner. Until a notice in writing designating a new agent has been approved by the Commissioner, any notice of deficiency or other communication mailed to the common parent will be considered as having been properly mailed to the agent of the group; or, if the Commissioner has reason to believe that the existence of the common parent has terminated, the Commissioner may deal directly with any member in respect of its liability.

* * * * *

Par. 37. Section 1.1502-77B is amended by revising and republishing paragraphs (a)(6)(i) and (ii) to read as follows:

§1.1502-77B Agent for the group applicable for consolidated return years beginning on or after June 28, 2002, and before April 1, 2015.

(a) * * *

(6) * * *

(i) *Several liability*. The Commissioner may, upon issuing to the common parent written notice that expressly invokes the authority of this provision, deal directly with any member of the group with respect to its liability under §1.1502-6 for the consolidated tax of the group, in which event such member has sole authority to act for itself with respect to that liability. However, if the Commissioner believes or has reason to believe that the existence of the common parent has terminated, the Commissioner may deal directly with any member with respect to that member's liability under §1.1502-6 without giving the notice required by this provision.

(ii) *Information requests*. The Commissioner may, upon informing the common parent, request information relevant to the consolidated tax liability from any member of the group. However, if the Commissioner believes or has reason to believe that the existence of the common parent has terminated, the Commissioner may request such information from any member of the group without informing the common parent.

* * * * *

Par. 38. Section 1.1502-78 is amended by revising paragraph (f) to read as follows:

§1.1502-78 Tentative carryback adjustments.

* * * * *

(f) *Applicability date.* This section applies to taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is after June 28, 2002, except that the provisions of paragraph (e)(2) of this section apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

Par. 39. Section 1.1502-79 is amended by revising paragraphs (a), (b), (d), and (e)(1) and (2) to read as follows:

§1.1502-79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return years.* For rules regarding the carryover and carryback of consolidated net operating losses to separate return years, *see* §1.1502-21(b).

(b) *Carryover and carryback of consolidated net capital loss to separate return years.* For rules regarding the carryover and carryback of consolidated net capital losses to separate return years, *see* §1.1502-22(b).

* * * * *

(d) *Carryover and carryback of consolidated unused foreign tax*—(1) *In general.* If a consolidated unused foreign tax can be carried under the principles of section 904(c) and §1.1502-4(d) to a separate return year of a corporation (or could have been so carried if such corporation were in existence) that was a member of the group in the year in which the unused foreign tax arose, then the portion of the consolidated unused foreign tax attributable to the corporation (as determined under paragraph (d)(2) of this section) is apportioned to the corporation (and any successor to that corporation in a transaction to which section 381(a) applies) under the principles of §1.1502-21(b) and is deemed paid or accrued in such separate return year to the extent provided in section 904(c).

(2) *Portion of consolidated unused foreign tax attributable to a member.* The portion of a consolidated unused foreign tax for any year attributable to a member is an amount equal to the consolidated unused foreign tax multiplied by a fraction. The numerator of the fraction is the foreign taxes paid or accrued by the member for the year (including those taxes deemed paid or accrued, other than by reason of section 904(c)). The denominator of the fraction is the aggregate of all such taxes paid or accrued for the year (including those taxes deemed paid or accrued, other than by reason of section 904(c)) by all members of the group.

(e) * * *

(1) *In general*. If the consolidated excess charitable contributions for any taxable year can be carried under the principles of section 170(b)(2) and §1.1502-24(b) to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such excess contributions arose, then the portion of such consolidated excess charitable contributions attributable to such corporation (as determined under paragraph (e)(2) of this section) is apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of §1.1502-21(b) and is a charitable contribution carryover to such separate return year.

(2) *Portion of consolidated excess charitable contributions attributable to a member.* The portion of the consolidated excess charitable contributions for any year attributable to a member is an amount equal to the consolidated excess contributions multiplied by a fraction. The numerator of the fraction is the charitable contributions paid by the member for the year. The denominator of the fraction is the aggregate of all charitable contributions paid for the year by all members of the group.

* * * * *

Par. 40. Section 1.1502-80 is amended by revising and republishing paragraph (c)(2) to read as follows:

§1.1502-80 Applicability of other provisions of law.

* * * * *

(c) * * *

(2) *Cross reference*. *See* §1.1502-36 for additional rules relating to worthlessness of subsidiary stock.

* * * * *

§1.1502-81T [Removed]

Par. 41. Section 1.1502-81T is removed.

Par. 42. Section 1.1502-90 is amended by revising the entry for §1.1502-99 to read as follows:

§1.1502-90 Table of contents.

* * * * *

§1.1502-99 Effective/applicability dates.

(a) In general.
(b) Reattribution of losses under §1.1502-36(d)(6).
(c) Application to section 163(j).
(1) Sections 1.382-2 and 1.382-5.
(2) Sections 1.382-6 and 1.383-1.

§1.1502-91 [Amended]

Par. 43. Section 1.1502-91 is amended by removing paragraph (b)(3).

Par. 44. Section 1.1502-92 is amended by:

a. Designating *Examples 1* through *3* in paragraph (b)(3)(iii) as paragraphs (b)(3)(iii)(A) through (C), respectively.

b. In newly redesignated paragraphs (b)(3)(iii)(A) through (C), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(b)(3)(iii)(A)(i) and (ii)...........................	(b)(3)(iii)(A)(*1*) and (*2*)
(b)(3)(iii)(B)(i), (ii), (iii), and (iv)..............	(b)(3)(iii)(B)(*1*), (*2*), (*3*), and (*4*)
(b)(3)(iii)(C)(i) and (ii)...........................	(b)(3)(iii)(C)(*1*) and (*2*)

c. Revising newly redesignated paragraphs (b)(3)(iii)(B)(*2*) through (*4*).

The revisions read as follows:

§1.1502-92 Ownership change of a loss group or a loss subgroup.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) * * *

(*2*) For purposes of determining if the L loss group has an ownership change on November 22, Year 3, the day of the merger, P is treated as a continuation of L so that the testing period for P begins on January 1, Year 2, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to Year 3 arose. Immediately after the close of November 22, Year 3, D is the only 5-percent shareholder that has increased its ownership interest in P during the testing period (from zero to 10 percentage points).

(*3*) The facts are the same as in paragraph (b)(3)(iii)(B)(*1*) of this section (*Example 2*), except that A has held 23 ⅓ shares (23 ⅓ percent) of L's stock for five years, and A purchased an additional 10 shares of L stock from E two years before the merger. Immediately after the close of the day of the merger (a testing date), A's ownership interest in P, the common parent of the L loss group, has increased by 6 ⅔ percentage points over A's lowest percentage ownership during the testing period (23 ⅓ percent to 30 percent).

(*4*) The facts are the same as in paragraph (b)(3)(iii)(B)(*1*) of this section (*Example 2*), except that P has a net operating loss arising in Year 1 that is carried to the first consolidated return year ending after the day of the merger. Solely for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, the testing period for P commences on January 1, Year 2. P does not determine the earliest day for its testing period by reference to its net operating loss carryover from Year 1, which §§1.1502-1(f)(3) and 1.1502-75(d)(3)(i) treat as arising in a SRLY. *See* §1.1502-94 to determine the application of section 382 with respect to P's net operating loss carryover.

* * * * *

Par. 45. Section 1.1502-99 is amended by:

a. Revising paragraphs (a) and (b).

b. Removing paragraph (c).

c. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§1.1502-99 Effective/applicability dates.

(a) *In general.* Sections 1.1502-91 through 1.1502-96 and §1.1502-98 apply to any testing date that is on or after June 25, 1999. Sections 1.1502-94 through 1.1502-96 also apply to a corporation that becomes a member of a group or ceases to be a member of a group (or loss subgroup) on or after June 25, 1999.

(b) *Reattribution of losses under §1.1502-36(d)(6).* Section 1.1502-96(d) applies to reattributions of net operating loss carryovers, capital loss carryovers, and deferred deductions in connection with a transfer of stock to which §1.1502-36 applies, and the election under §1.1502-96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with an election under §1.1502-36(d)(6) to reattribute a loss to the common parent that is filed at the time and in the manner provided in §1.1502-36(e)(5)(x).

* * * * *

Par. 46. Section 1.1502-100 is amended by revising and republishing paragraphs (a)(2), (c)(2), and (d) to read as follows:

§1.1502-100 Corporations exempt from tax.

(a) * * *

(2) *Applicability of other consolidated return provisions*. The provisions of the consolidated return regulations are applicable to an exempt group to the extent they are not inconsistent with the provisions of this section or the provisions of subchapter F of chapter 1 of the Code. For purposes of applying the provisions of the consolidated return regulations to an exempt group, the following substitutions must be made—

(i) The term "exempt group" is substituted for the term "group";

(ii) The terms "unrelated business taxable income", "separate unrelated business taxable income", and "consolidated unrelated business taxable income" are substituted for the terms "taxable income", "separate taxable income", and "consolidated taxable income"; and

(iii) The term *consolidated liability for tax determined under §1.1502-2* (or an equivalent term) means the consolidated liability for tax of an exempt group determined under paragraph (b) of this section.

* * * * *

(c) * * *

(2) Any consolidated net operating loss deduction (determined under §1.1502-21) subject to the limitations provided in section 512(b)(6);

* * * * *

(d) *Separate unrelated business taxable income*—(1) *In general.* The separate unrelated business taxable income of a member of an exempt group must be computed in accordance with the provisions of section 512 covering the determination of unrelated business taxable income of separate corporations, except that:

(i) The provisions of paragraphs (a) through (d), (f) through (k), and (o) of §1.1502-12 apply; and

(ii) No charitable contributions deduction is taken into account under section 512(b)(10).

(2) *Section 501(c)(2) organizations. See* sections 511(c) and 512(a)(3)(C) for special rules applicable to organizations described in section 501(c)(2).

§§1.1502-9A, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, 1.1502-79A, 1.1502-90A, 1.1502-91A, 1.1502-92A, 1.1502-93A, 1.1502-94A, 1.1502-95A, 1.1502-96A, 1.1502-97A, 1.1502-98A, 1.1502-99A, and 1.1503-2 [Removed]

Par. 47. Sections 1.1502-9A, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, 1.1502-79A, 1.1502-90A, 1.1502-91A, 1.1502-92A, 1.1502-93A, 1.1502-94A, 1.1502-95A, 1.1502-96A, 1.1502-97A, 1.1502-98A, 1.1502-99A, and 1.1503-2 are removed.

Par. 48. Section 1.1503(d)-1 is amended by revising and republishing paragraph (b)(7) to read as follows:

§1.1503(d)-1 Definitions and special rules for filings under section 1503(d).

* * * * *

(b) * * *

(7) *Foreign country* includes any U.S. territory (as defined in §1.1502-1(l)).

* * * * *

Par. 49. Section 1.1503(d)-8 is amended by:

a. Revising and republishing paragraph (a).

b. Removing and reserving paragraphs (b)(1) and (2), (b)(3)(ii) and (iii), and (b)(4).

The revision and republication read as follows:

§1.1503(d)-8 Effective dates.

(a) *General rule*. Except as provided in paragraph (b) of this section, this paragraph (a) provides the dates of applicability of §§1.1503(d)-1 through 1.1503(d)-7. Sections 1.1503(d)-1 through 1.1503(d)-7 apply to dual consolidated losses incurred in taxable years beginning on or after April 18, 2007. However, a taxpayer may apply §§1.1503(d)-1 through 1.1503(d)-7, in their entirety, to dual consolidated losses incurred in taxable years beginning on or after January 1, 2007, by filing its return and attaching to such return the domestic use agreements, certifications, or other information in accordance with these regulations. For purposes of this section, the term application date means either April 18, 2007, or, if the taxpayer applies these regulations pursuant to the preceding sentence, January 1, 2007. Section 1.1503-2, as contained in 26 CFR part 1, revised as of April 1, 2024, applies for dual consolidated losses incurred in taxable years beginning on or after October 1, 1992, and before the application date.

* * * * *

Par. 50. Section 1.1504-3 is amended by revising and republishing paragraph (d)(1)(ii) to read as follows:

§1.1504-3 Treatment of stock in a QOF C corporation for purposes of consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) *Analysis*. Under paragraph (b)(1) of this section, stock of a QOF C corporation (qualifying or otherwise) is not treated as stock for purposes of determining whether the QOF C corporation may join in the filing of a consolidated return. Thus, because no election has been made under paragraph (b)(2) of this section, once Q1 becomes a QOF, Q1 ceases to be affiliated with the P group members for purposes of section 1501, and it deconsolidates from the P group. *See* the consolidated return regulations generally for the consequences of deconsolidation.

* * * * *

Par. 51. Section 1.1552-1 is amended by:

a. Redesignating paragraphs (a)(1)(ii) *(a)* through *(d)* as paragraphs (a)(1)(ii)(A) through (D), respectively.

b. Revising newly redesignated paragraph (a)(1)(ii)(B).

c. Redesignating paragraphs (a)(2)(ii) (*a*) through (*i*) as paragraphs (a)(2)(ii)(A) through (I), respectively.

d. Removing and reserving newly redesignated paragraph (a)(2)(ii)(B).

e. Revising newly redesignated paragraph (a)(2)(ii)(I).

f. Adding paragraph (g).

The revisions and addition read as follows:

§1.1552-1 Earnings and Profits.

(a) * * *

(1) * * *

(ii) * * *

(B) Such member's capital gain net income (determined without regard to any net capital loss carryover attributable to such member);

* * * * *

(2) * * *

(ii) * * *

(I) For purposes of subtitle A of the Code, if two or more taxable income brackets are set forth in section 11(b) of the Code, the amount in each taxable income bracket is divided by the number of members (or such portion of each bracket which is apportioned to the member pursuant to a schedule attached to the consolidated return for the consolidated return year). However, if for the taxable year some or all of the members are component members of a controlled group of corporations (within the meaning of section 1563) and if there are other such component members which do not join in filing the consolidated return for such year, the amount to be divided among the members filing the consolidated return is (in lieu of the taxable income brackets) the sum of the amounts apportioned to the component members which join in filing the consolidated return.

* * * * *

(g) *Applicability date*. This section applies to taxable years beginning on or after January 1, 2025. *See* 26 CFR 1.1552-1, as revised April 1, 2024, for rules applicable prior to January 1, 2025.

Par. 52. Section 1.1563-1 is amended by:

a. Revising and republishing paragraphs (a)(2)(i)(A) and (B) and (a)(6);

b. In paragraph (b)(4), designating *Examples 1* through *4* as paragraphs (b)(4)(i) through (iv), respectively;

c. Revising newly designated paragraph (b)(4)(i); and

d. Revising paragraph (e).

The revisions read as follows:

§1.1563-1 Definition of controlled group of corporations and component members and related concepts.

(a) * * *

(2) * * *

(i) * * *

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of §1.1563-3(b)(1), (2), and (3)) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application of §1.1563-3(b)(1), (2), and (3)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

* * * * *

(6) *Voting power of stock*. For purposes of this section, and §§1.1563-2 and 1.1563-3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote the shareholder's stock in a corporation, the formal voting rights possessed by the shareholder's stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote the shareholder's stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

* * * * *

(b) * * *

(4) * * *

(i) *Example 1*. B, an individual, owns all of the stock of corporations W and X on each day of 1964. W and X each use the calendar year as their taxable year. On January 1, 1964, B also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock B sells on October 15, 1964. On December 1, 1964, B purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the component members of the group on such December 31st are W, X, and Y. Under paragraph (b)(2)(i) of this section, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under paragraph (b)(3) of this section, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

* * * * *

(e) *Applicability dates—(1) In general.* Except as provided in paragraph (e)(2) of this section, this section applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this section to taxable years beginning before May 26, 2009. For taxable years beginning before May 26, 2009, *see* §1.1563-1T as contained in 26 CFR part 1 in effect on April 1, 2009.

(2) *Exceptions*. (i) Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after April 11, 2011.

(ii) Paragraphs (a)(2)(i)(A) and (B), (a)(6), and (b)(4) of this section apply to taxable years beginning on or after December 30, 2024.

Par. 53. Section 1.1563-2 is amended by:

a. Revising and republishing paragraphs (b)(2)(iii) and (b)(4)(ii);

b. In paragraph (b)(7), designating *Examples 1* through *3* as paragraphs (b)(7)(i) through (iii), respectively;

c. Revising newly designated paragraph (b)(7)(ii) and (iii); and

d. Adding paragraph (d).

The revisions and addition read as follows:

§1.1563-2 Excluded stock.

* * * * *

(b) * * *

(2) * * *

(iii) *Employees*. Stock in the subsidiary corporation owned (directly and with the application of the rules contained in §1.1563-3(b)) by an employee of the subsidiary corporation if such stock is subject to conditions which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock and which run in favor of the parent or subsidiary corporation. In general, any condition which extends, directly or indirectly, to the parent corporation or the subsidiary corporation preferential rights with respect to the acquisition of the employee's (or direct owner's) stock will be considered to be a condition described in the preceding sentence. It is not necessary, in order for a condition to be considered to be in favor of the parent corporation or the subsidiary corporation, that the parent or subsidiary be extended a discriminatory concession with respect to the price of the stock. For example, a condition whereby the parent corporation is given a right of first refusal with respect to any stock of the subsidiary corporation offered by an employee for sale is a condition which substantially restricts or limits the employee's right to dispose of such stock and runs in favor of the parent corporation. Moreover, any legally enforceable condition which prohibits the employee from disposing of the employee's stock without the consent of the parent (or a subsidiary of the parent) will be considered to be a substantial limitation running in favor of the parent corporation.

* * * * *

(4) * * *

(ii) *Employees*. Stock in such corporation owned (directly and with the application of the rules contained in §1.1563-3(b)) by an employee of such corporation if such stock is subject to conditions which run in favor of a common owner of such corporation (or in favor of such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the record owner's right) to dispose of such stock. The principles of paragraph (b)(2)(iii) of this section apply in determining whether a condition satisfies the requirements of the preceding sentence. Thus, in general, a condition which extends, directly or indirectly, to a common owner or such corporation preferential rights with respect to the acquisition of the employee's (or record owner's) stock will be considered to be a condition which satisfies such requirements. For purposes of this paragraph (b)(4)(ii), if a condition which restricts or limits an employee's right (or record owner's right) to dispose of the employee's (or record owner's) stock also applies to the stock in such corporation held by such common owner pursuant to a bona fide reciprocal stock purchase arrangement, such condition is not treated as one which restricts or limits the employee's (or record owner's) right to dispose of such stock. An example of a reciprocal stock purchase arrangement is an agreement whereby a common owner and the employee are given a right of first refusal with respect to stock of the employer corporation owned by the other party. If, however, the agreement also provides that the common owner has the right to purchase the stock of the employer corporation owned by the employee in the event that the corporation should discharge the employee for reasonable cause, the purchase arrangement would not be reciprocal within the meaning of this paragraph (b)(4)(ii).

* * * * *

(7) * * *

(ii) *Example 2*. The facts are the same as in paragraph (b)(7)(i) of this section (*Example 1*), except that Jones owns 15 shares of the 100 shares of the only class of stock of corporation S-1, and corporation S owns 75 shares of such stock. P satisfies the 50 percent stock ownership requirement of paragraph (b)(1) of this section with respect to S-1 since P is considered as owning 52.5 percent (70 percent x 75 percent) of the S-1 stock with the application of §1.1563-3(b)(4). Since Jones is an officer of P, under paragraph (b)(2)(ii) of this section, the S-1 stock owned by Jones is treated as not outstanding for purposes of determining whether S-1 is a member of the parent-subsidiary controlled group of corporations. Thus, S is considered to own stock possessing 88.2 percent (75÷85) of the voting power and value of the S-1 stock. Accordingly, P, S, and S-1 are members of a parent-subsidiary controlled group of corporations.

(iii) *Example 3*. Corporation X owns 60 percent of the only class of stock of corporation Y. D, the president of Y, owns the remaining 40 percent of the stock of Y. D has agreed that, if D offers D's stock in Y for sale, D will first offer the stock to X at a price equal to the fair market value of the stock on the first date the stock is offered for sale. Since D is an employee of Y within the meaning of section 3306(i) of the Code, and D's stock in Y is subject to a condition which substantially restricts or limits D's right to dispose of such stock and runs in favor of X, under paragraph (b)(2)(iii) of this section such stock is treated as if it were not outstanding for purposes of determining whether X and Y are members of a parent-subsidiary controlled group of corporations. Thus, X is considered to own stock possessing 100 percent of the voting power and value of the stock of Y. Accordingly, X and Y are members of a parent-subsidiary controlled group of corporations. The result would be the same if D's spouse, instead of D, owned directly the 40 percent stock interest in Y and such stock was subject to a right of first refusal running in favor of X.

* * * * *

(d) *Applicability date.* This section applies to taxable years beginning on or after December 30, 2024. For taxable years beginning before December 30, 2024, *see* §1.1563-2 as contained in 26 CFR part 1 in effect on April 1, 2024.

Par. 54. Section 1.1563-3 is amended by revising and republishing paragraphs (b)(2)(i) and (ii), (b)(3)(i) and (ii), (b)(4)(ii), (b)(5)(i) and (ii), (b)(6)(i), (ii), and (iv), (c)(2) and (4), (d)(3), and (e) to read as follows:

§1.1563-3 Rules for determining stock ownership.

* * * * *

(b) * * *

(2) * * *

(i) *Rule*. Stock owned, directly or indirectly, by or for a partnership is considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to the partner's interest in capital or profits, whichever such proportion is the greater.

(ii) *Example*—(A) *Facts*. Green, Jones, and White are unrelated individuals and are partners in the GJW partnership. The partners' interests in the capital and profits of the partnership are as follows:

Table 1 to Paragraph (b)(2)(ii)(A)

Partner	Capital Percent	Profit Percent
Green	36	25
Jones	60	71
White	4	4

(B) *Analysis*. The GJW partnership owns the entire outstanding stock (100 shares) of X Corporation. Under this paragraph (b)(2), Green is considered to own the X stock owned by the partnership in proportion to Green's interest in capital (36 percent) or profits (25 percent), whichever such proportion is the greater. Therefore, Green is considered to own 36 shares of the X stock. However, since Jones has a greater interest in the profits of the partnership, Jones is considered to own the X stock in proportion to Jones's interest in such profits. Therefore, Jones is considered to own 71 shares of the X stock. Since White does not have an interest of 5 percent or more in either the capital or profits of the partnership, White is not considered to own any shares of the X stock.

(3) * * *

(i) Stock owned, directly or indirectly, by or for an estate or trust is considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this paragraph (b)(3)(i), the actuarial interest of each beneficiary is determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy the beneficiary's rights as a beneficiary. A beneficiary of an estate or trust who cannot under any circumstances receive any interest in stock held by the estate or trust, including the proceeds from the disposition thereof, or the income therefrom, does not have an actuarial interest in such stock. Thus, where stock owned by a decedent's estate has been specifically bequeathed to certain beneficiaries and the remainder of the estate is bequeathed to other beneficiaries, the stock is attributable only to the beneficiaries to whom it is specifically bequeathed. Similarly, a remainderman of a trust who cannot under any circumstances receive any interest in the stock of a corporation which is a part of the corpus of the trust (including any accumulated income therefrom or the proceeds from a disposition thereof) does not have an actuarial interest in such stock. However, an income beneficiary of a trust does have an actuarial interest in stock if that beneficiary has any right to the income from such stock even though under the terms of the trust instrument such stock can never be distributed to that beneficiary. The factors and methods prescribed in §20.2031-7 of this chapter (Estate Tax Regulations) for use in ascertaining the value of an interest in property for estate tax purposes must be used for purposes of this paragraph (b)(3)(i) in determining a beneficiary's actuarial interest in stock owned directly or indirectly by or for a trust.

(ii) For the purposes of this paragraph (b)(3), property of a decedent is considered as owned by the decedent's estate if such property is subject to administration by the executor or administrator for the purposes of paying claims against the estate and expenses of administration notwithstanding that, under local law, legal title to such property vests in the decedent's heirs, legatees or devisees immediately upon death. With respect to an estate, the term *beneficiary* includes any person entitled to receive property of the decedent pursuant to a will or pursuant to laws of descent and distribution. A person no longer is considered a beneficiary of an estate when all the property to which the person is entitled has been received by the person, when the person no longer has a claim against the estate arising out of having been a beneficiary, and when there is only a remote possibility that it will be necessary for the estate to seek the return of property or to seek payment from the person by contribution or otherwise to satisfy claims against the estate or expenses of administration. When pursuant to the preceding sentence, a person ceases to be a beneficiary, stock owned by the estate is not thereafter considered owned by the person.

* * * * *

(4) * * *

(ii) *Example*. Brown, an individual, owns 60 shares of the 100 shares of the only class of outstanding stock of corporation P. Smith, an individual, owns 4 shares of the P stock, and corporation X owns 36 shares of the P stock. Corporation P owns, directly and indirectly, 50 shares of the stock of corporation S. Under this paragraph (b)(4), Brown is considered to own 30 shares of the S stock (60⁄100 × 50), and X is considered to own 18 shares of the S stock (36⁄100 × 50). Since Smith does not own 5 percent or more in value of the P stock, Smith is not considered as owning any of the S stock owned by P. If, in this example, Smith's spouse had owned directly 1 share of the P stock, Smith (and Smith's spouse) would each own 5 shares of the P stock, and therefore Smith (and Smith's spouse) would be considered as owning 2.5 shares of the S stock (5⁄100 × 50).

(5) * * *

(i) Except as provided in paragraph (b)(5)(ii) of this section, an individual is considered to own the stock owned, directly or indirectly, by or for the individual's spouse, other than a spouse who is legally separated from the individual under a decree of divorce, whether interlocutory or final, or a decree of separate maintenance.

(ii) An individual is not considered to own stock in a corporation owned, directly or indirectly, by or for the individual's spouse on any day of a taxable year of such corporation, provided that each of the following conditions are satisfied with respect to such taxable year:

(A) Such individual does not, at any time during such taxable year, own directly any stock in such corporation.

(B) Such individual is not a member of the board of directors or an employee of such corporation and does not participate in the management of such corporation at any time during such taxable year.

(C) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities.

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or the individual's children who have not attained the age of 21 years. The principles of §1.1563–2(b)(2)(iii) apply in determining whether a condition is a condition described in the preceding sentence.

* * * * *

(6) * * *

(i) An individual is considered to own the stock owned, directly or indirectly, by or for the individual's children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for the individual's parents.

(ii) If an individual owns (directly, and with the application of the rules of this paragraph but without regard to this paragraph (b)(6)(ii)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation, then such individual is considered to own the stock in such corporation owned, directly or indirectly, by or for the individual's parents, grandparents, grandchildren, and children who have attained the age of 21 years. In determining whether the stock owned by an individual possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, *see* §1.1563-1(a)(6).

* * * * *

(iv) *Example*—(A) *Facts*. Individual B owns directly 40 shares of the 100 shares of the only class of stock of Z Corporation. B's child, M (20 years of age), owns directly 30 shares of such stock, and B's child, A (30 years of age), owns directly 20 shares of such stock. The remaining 10 shares of the Z stock are owned by an unrelated person.

(B) *B's ownership*. Individual B owns 40 shares of the Z stock directly and is considered to own the 30 shares of Z stock owned directly by M. Since, for purposes of the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section, B is treated as owning 70 shares or 70 percent of the total voting power and value of the Z stock, B is also considered as owning the 20 shares owned by B's adult child, A. Accordingly, B is considered as owning a total of 90 shares of the Z stock.

(C) *M's ownership*. Minor child, M, owns 30 shares of the Z stock directly, and is considered to own the 40 shares of Z stock owned directly by B. However, M is not considered to own the 20 shares of Z stock owned directly by M's sibling, A, and constructively by B, because stock constructively owned by B by reason of family attribution is not considered as owned by M for purposes of making another member of B's family the constructive owner of such stock. *See* paragraph (c)(2) of this section. Accordingly, M owns and is considered as owning a total of 70 shares of the Z stock.

(D) *A's ownership*. Adult child, A, owns 20 shares of the Z stock directly. Since, for purposes of the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section, A is treated as owning only the Z stock which A owns directly, A does not satisfy the condition precedent for the attribution of Z stock from B. Accordingly, A is treated as owning only the 20 shares of Z stock which A owns directly.

(c) * * *

(2) *Members of family*. Stock constructively owned by an individual by reason of the application of paragraph (b)(5) or (6) of this section is not treated as owned by the individual for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

* * * * *

(4) *Examples*. The provisions of this paragraph (c) may be illustrated by the following examples:

(i) *Example 1*. A, 30 years of age, has a 90 percent interest in the capital and profits of a partnership. The partnership owns all the outstanding stock of corporation X and X owns 60 shares of the 100 outstanding shares of corporation Y. Under paragraph (c)(1) of this section, the 60 shares of Y constructively owned by the partnership by reason of paragraph (b)(4) of this section is treated as actually owned by the partnership for purposes of applying paragraph (b)(2) of this section. Therefore, A is considered as owning 54 shares of the Y stock (90 percent of 60 shares).

(ii) *Example 2*. The facts are the same as in paragraph (c)(4)(i) of this section (*Example 1*), except that that B, who is 20 years of age and the sibling of A, directly owns 40 shares of Y stock. Although the stock of Y owned by B is considered as owned by C (the parent of A and B) under paragraph (b)(6)(i) of this section, under paragraph (c)(2) of this section such stock may not be treated as owned by C for purposes of applying paragraph (b)(6)(ii) of this section in order to make A the constructive owner of such stock.

(iii) *Example 3*. The facts are the same as in paragraph (c)(4)(ii) of this section (*Example 2*), except that that C has an option to acquire the 40 shares of Y stock owned by B. The rule contained in paragraph (c)(2) of this section does not prevent the reattribution of such 40 shares to A because, under paragraph (c)(3) of this section, C is considered as owning the 40 shares by reason of option attribution and not by reason of family attribution. Therefore, since A satisfies the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section with respect to Y, the 40 shares of Y stock constructively owned by C are reattributed to A, and A is considered as owning a total of 94 shares of Y stock.

(d) * * *

(3) *Examples*. The provisions of this paragraph (d) may be illustrated by the following examples, in which each corporation referred to uses the calendar year as its taxable year and the stated facts are assumed to exist on each day of 1970 (unless otherwise provided in the example):

(i) *Example 1*. Jones owns all the stock of corporation X and has an option to purchase from Smith all the outstanding stock of corporation Y. Smith owns all the outstanding stock of corporation Z. Since the Y stock is considered as owned by two or more persons, under paragraph (d)(2)(ii) of this section, the Y stock is treated as owned only by Smith since Smith has direct ownership of such stock. Therefore, on December 31, 1970, Y and Z are component members of the same brother-sister controlled group. If, however, Smith had owned Smith's stock in corporation Z for less than one-half of the number of days of Z's 1970 taxable year, then under paragraph (d)(1) of this section, the Y stock would be treated as owned only by Jones since Jones's ownership results in Y being a component member of a controlled group on December 31,1970.

(ii) *Example 2*. Individual A owns directly all the outstanding stock of corporation M. B (the spouse of A) owns directly all the outstanding stock of corporation N. Neither spouse is considered as owning the stock directly owned by the other because each of the conditions prescribed in paragraph (b)(5)(ii) of this section is satisfied with respect to each corporation's 1970 taxable year. A owns directly 60 percent of the only class of stock of corporation P and B owns the remaining 40 percent of the P stock. Under paragraph (d)(2)(iii) of this section, the stock of P is treated as owned only by A since A owns (directly and with the application of the rules contained in paragraphs (b)(1) through (4) of this section) the stock possessing the greatest percentage of the total value of shares of all classes of stock of P. Accordingly, on December 31, 1970, P is treated as a component member of a brother-sister group consisting of M and P.

(iii) *Example 3*. Unrelated individuals A and B each own 49 percent of all the outstanding stock of corporation R, which in turn owns 70 percent of the only class of outstanding stock of corporation S. The remaining 30 percent of the stock of corporation S is owned by unrelated individual C. C also owns the remaining 2 percent of the stock of corporation R. Under the attribution rule of paragraph (b)(4) of this section, A and B are each considered to own 34.3 percent of the stock of corporation S. Accordingly, since five or fewer persons own at least 80 percent of the stock of corporations R and S and also own more than 50 percent identically (A's and B's identical ownership each is 34.3 percent, C's identical ownership is 2 percent), on December 31, 1970, corporations R and S are treated as component members of the same brother-sister controlled group for purposes of §1.1563-1(a)(3)(ii).

* * * * *

(e) *Applicability dates.* This section applies to taxable years beginning on or after December 30, 2024. For taxable years beginning before December 30, 2024, *see* §1.1563-3 as contained in 26 CFR part 1 in effect on April 1, 2024.

PART 5—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1978

Par. 55. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 7805.

§5.1502-45 [Removed]

Par. 56. Section 5.1502-45 is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 57. The authority citation for part 301 continues to read in part as follows:

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

Par. 58. Section 301.6402-7 is amended by revising and republishing paragraph (g)(2)(iii) to read as follows:

§301.6402-7 Claims for refund and applications for tentative carryback adjustments involving consolidated groups that include insolvent financial institutions.

* * * * *

(g) * * *

(2) * * *

(iii) *Absorption of net operating losses*. The absorption of net operating losses generally is determined under applicable principles of the Code and regulations, including the principles of section 172 and §1.1502-21(b) of this chapter. Notwithstanding any contrary rule or principle of the Code or regulations, if an institution and another member of the carryback year group have net operating losses that arise in taxable years ending on the same date and are carried to the same consolidated carryback year, the carryback year group's consolidated taxable income for that year is treated as offset first by the loss attributable to the institution to the extent thereof.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 59. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 60. Section 602.101 is amended in the table in paragraph (b) by removing the entries for §§1.1502-9A, 1.1502-18, 1.1502-76T, 1.1502-95A, 1.1503-2, and 1.1503-2A.

Douglas W. O'Donnell,
Deputy Commissioner

Approved: November 14, 2024.

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

(Filed by the Office of the Federal Register December 27, 2024, 8:45 a.m., and published in the issue of the Federal Register for December 30, 2024, 89 FR 106848)

26 CFR 1.36B-1-6

T.D. 10019

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Definition of the Term "Coverage Month" for Computing the Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the definition of "coverage month" and amend certain other rules in existing income tax regulations regarding the computation of an individual taxpayer's premium tax credit. The coverage month amendment generally provides that, in computing a premium tax credit, a month may be a coverage month for an individual if the amount of the premium paid, including by advance payments of the premium tax credit, for the month for the individual's coverage is sufficient to avoid termination of the individual's coverage for that month. The final regulations also amend the existing regulations relating to the amount of enrollment premiums used in computing the taxpayer's monthly premium tax credit if a portion of the monthly enrollment premium for a coverage month is unpaid. Finally, the final regulations clarify when an individual is considered to be not eligible for coverage under a State's Basic Health Program. The final regulations affect taxpayers who enroll themselves, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange and may be allowed a premium tax credit for the coverage.

DATES: *Effective date*: These final regulations are effective on December 18, 2024.

Applicability Date: These final regulations apply to taxable years beginning on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Clara Raymond at (202) 317-4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code).[1] Section 36B(h) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to prescribe such regulations as may be necessary to carry out section 36B, including regulations that provide for the coordination of the premium tax credit (PTC) allowed under 36B with the program for advance payments of the PTC (APTC) under section 1412 of the Affordable Care Act.[2] The final regulations are also issued under the express delegation of authority under section 7805(a), which 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. *Section 36B Rules Relating to Coverage Months and Monthly PTC Amount*

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer's family enrolls in a qualified health plan (QHP) through a Health Insurance Exchange (Exchange) for one or more "coverage months."

Section 1.36B-3(c)(1) provides that a month is a coverage month for an individual if (i) as of the first day of the month, the individual is enrolled in a QHP through an Exchange; (ii) the taxpayer pays the taxpayer's share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, or the full premium for the month is paid by APTC; and (iii) the individual is not eligible for the full calendar month for minimum essential coverage (within the meaning of §1.36B-2(c)) other than coverage described in section 5000A(f)(1)(C) of the Code (relating to coverage in the individual market).

Section 1.36B-3(d)(1) provides that the PTC (also called the premium assistance amount) for a coverage month is the lesser of (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year. The term "family" is defined in §1.36B-1(d), and the applicable percentage is defined in §1.36B-3(g).

Section 1.36B-2(c)(2)(i) provides that, for purposes of determining whether a given month is a coverage month for an individual, an individual generally is considered eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program described in section 5000A(f)(1)(A) as of the first day of the first full month the individual may receive benefits under the program.

Section 1.36B-2(c)(2)(v) provides that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange determines or considers (within the meaning of 45 CFR 155.302(b)) the individual to be not eligible for Medicaid or CHIP.

Section 36B(f)(3) and §1.36B-5 require Exchanges to report to QHP enrollees and the IRS certain information, including monthly enrollment premiums, needed to

[1] Unless otherwise indicated, references to "section" or "§" are to sections of the Code or the Treasury regulations issued thereunder.
[1] Unless otherwise indicated, references to "section" or "§" are to sections of the Code or the Treasury regulations issued thereunder.

compute the PTC allowed for the enrollee. This information is reported to enrollees on IRS Form 1095-A, *Health Insurance Marketplace Statement*. The Centers for Medicare & Medicaid Services (CMS), part of the Department of Health and Human Services (HHS), is responsible for the Form 1095-A reporting for Exchanges that use the Federal eligibility and enrollment platform (Federally-facilitated Exchanges, or FFEs, and State-based Exchanges on the Federal platform, or SBE-FPs). State Exchanges with their own platforms (State Exchanges) are responsible for the Form 1095-A reporting for individuals who enroll in a QHP through their State Exchange.

II. *HHS Rules Relating to Coverage when Premiums are Unpaid*

HHS regulations at 45 CFR 156.270(d) implement section 1412(c)(2)(B)(iv)(II) of the Affordable Care Act to require issuers of QHPs to allow a "grace period" for enrollees for whom the APTC is paid but who fail to timely pay their share of the premium for the coverage. In general, a QHP issuer must provide a grace period of 3 consecutive months for such an enrollee before the issuer may terminate the enrollee's coverage. During the first month of the grace period, the QHP issuer must pay all appropriate claims for services rendered, and, during the second and third months of the grace period, the QHP issuer may pend claims.

HHS regulations at 45 CFR 155.400(g) allow issuers to implement a premium payment threshold policy under which issuers can consider enrollees to have paid all amounts due if the enrollees pay an amount sufficient to maintain a percentage of total premium paid out of the total premium owed equal to or greater than a level prescribed by the issuer, provided that the level and the policy are applied in a uniform manner to all enrollees. If an enrollee satisfies these conditions, the issuer may provide coverage even though the full enrollment premium is not paid.

In certain States, issuers also may provide coverage without payment of the full enrollment premium if a State department of insurance prohibits an issuer from terminating QHP coverage during a declared emergency.

III. *Proposed Regulations*

On September 17, 2024, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-116787-23) in the *Federal Register* (89 FR 75984) under section 36B (proposed regulations). The proposed regulations would have changed the definition of "coverage month" in §1.36B-3(c)(1) for some scenarios for which the full premium for the month is unpaid by the unextended due date of the taxpayer's return for the year of coverage, provided the amount of the premium paid for the month, including by APTC, is sufficient to avoid termination of the individual's coverage for that month. The proposed regulations would have provided that a month for which the enrollment premium is not fully paid may be a coverage month in the following scenarios: (i) the first month of a grace period described in 45 CFR 156.270(d); (ii) a month for which a premium payment threshold under 45 CFR 155.400(g) has been met and for which month the issuer of the individual's qualified health plan provides coverage; and (iii) a month for which a State department of insurance has, during a declared emergency, issued an order prohibiting the issuer of the individual's qualified health plan from terminating the individual's coverage for the month irrespective of whether the full premium for the month is paid.

The proposed amendment to the definition of "coverage month" would have required a conforming change to the calculation of the monthly PTC amount under §1.36B-3(d)(1)(i) so that the premium for a month to be considered in determining the monthly PTC for an individual's coverage would be reduced by any portion of the premium that is unpaid as of the unextended due date for filing the taxpayer's income tax return for the taxable year that includes the month.

Finally, the proposed regulations would have clarified §1.36B-2(c)(2)(v) to provide that an individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a State's Basic Health Program (BHP), for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program.

The Treasury Department and the IRS received nine public comments in response to the notice of proposed rulemaking. Copies of the comments are available for public inspection at *http://www.regulations.gov* or upon request. A public hearing on the proposed regulations was scheduled for December 13, 2024. There were no requests to speak at the scheduled public hearing. Consequently, the public hearing was cancelled. After considering all the comments received, the Treasury Department and the IRS adopt the proposed regulations without modifications.

Summary of Comments and Explanation of Revisions

I. *Overview*

All nine public comments on the proposed regulations were in support of the rules in the proposed regulations. One commenter requested that the final regulations include detailed requirements, expectations, and examples relating to reporting by Exchanges of enrollment premiums and second lowest cost silver plan (SLCSP) premiums on Form 1095-A for a month for which a taxpayer's share of the enrollment premium is not paid in full (non-payment month) that may be a coverage month. Another commenter requested that all non-payment months for which coverage is provided be considered coverage months. Finally, several commenters requested flexibility for Exchanges to comply with the new coverage month rule. The comments are addressed in more detail in Parts II through IV of this Summary of Comments and Explanation of Revisions.

II. *Additional Guidance for Reporting on Form 1095-A*

As discussed in Part I of the Background section of this preamble, section 36B(f)(3) and §1.36B-5 require Exchanges to report to QHP enrollees and the IRS certain information needed to compute the

PTC allowed for the enrollee. This information is reported to enrollees on IRS Form 1095-A. The enrollee's monthly enrollment premiums are reported in column A of Part III of Form 1095-A and the enrollee's monthly second lowest cost silver plan (SLCSP) premiums are reported in column B of the form.

The current instructions for Form 1095-A require Exchanges to report $0 in column A of Form 1095-A as the enrollment premium for a non-payment month. The instructions also require Exchanges to report $0 for a non-payment month in column B of Form 1095-A as the amount of the taxpayer's SLCSP premium for the month. Reporting $0 as the monthly amount in either column A or column B signals to the taxpayer and the IRS that this is not a coverage month and, thus, no PTC is allowed for the month.

One commenter requested that the final regulations include detailed requirements, expectations, and examples relating to how Exchanges should report enrollment premiums and SLCSP premiums on Form 1095-A for non-payment months that may be coverage months. The commenter asked that the examples demonstrate how Exchanges should report multiple grace periods in a calendar year, mid-month changes, and partial payments.

The commenter's request for detailed guidance on how Exchanges should report amounts on Form 1095-A is best addressed in the Instructions for Form 1095-A, rather than in regulatory text. The IRS intends to revise the 2025 Instructions for Form 1095-A to reflect the coverage month changes in these final regulations. Specifically, the revised instructions will require Exchanges to report in column A of Part III of Form 1095-A the full enrollment premium for any month that is a coverage month if such month is (i) the first month of a grace period described in 45 CFR 156.270(d) for the plan enrollees; (ii) a month for which a premium payment threshold under 45 CFR 155.400(g) has been met and for which month the issuer of the individual's qualified health plan provides coverage; or (iii) a month for which a State department of insurance has, during a declared emergency, issued an order prohibiting the issuer of the individual's qualified health plan from terminating the individual's coverage for the month (the three scenarios described in §1.36B-3(c)(4)). The instructions will continue to provide that Exchanges must report $0 in column A for any other months for which the full enrollment premium for the month is not paid, and that the amount reported in column A should be reduced by any enrollment premium refunds or credits.

Similarly, the instructions for column B of Part III of Form 1095-A will be amended to provide that Exchanges should not report $0 as the SLCSP premium for any months for which the full enrollment premium is not paid, if the month is a coverage month under one of the three scenarios described in §1.36B-3(c)(4). Instead, Exchanges should report the SLCSP premium that would apply if the enrollment premium had been paid in full.

With regard to the commenter's request for examples demonstrating how to report amounts on Form 1095-A under the final regulations, the Treasury Department and the IRS understand that State Exchanges may need additional guidance as they proceed with implementation of these final regulations. The Treasury Department and the IRS welcome additional input and will continue to work with State Exchanges to ensure that the Instructions for Form 1095-A adequately address how Exchanges should report non-payment months as coverage months under one of the three scenarios described in §1.36B-3(c)(4).

III. *Additional Scenarios for Which Non-Payment Months may be Coverage Months*

The proposed regulations included a request for comments on whether the final regulations should include scenarios in addition to those provided in the proposed regulations regarding non-payment months that may be coverage months. One commenter suggested that the final regulations should permit all non-payment months to be coverage months as long as the amount of the premium paid for the month, including by APTC, is sufficient to avoid termination of the individual's coverage for that month.

In drafting the proposed regulations, the Treasury Department and the IRS considered but rejected a rule that would allow all non-payment months to be coverage months if the amount of the premium paid for the month, including by APTC, is sufficient to avoid termination of the individual's coverage for the month. As stated in the preamble to the proposed regulations, a main reason for amending the coverage month definition is to promote reporting consistency among Exchanges regarding the reporting of enrollment premiums for non-payment months. The Treasury Department and the IRS worked closely with HHS staff to identify the three scenarios described in §1.36B-3(c)(4) as scenarios for which there is inconsistent reporting among Exchanges. In addition, the Treasury Department and the IRS have determined that an open-ended rule that could be interpreted differently by different Exchanges, based on their particular State law or practices, would not achieve more consistent reporting among Exchanges. Exchanges, as well as taxpayers and the IRS, need clarity on the definition of a coverage month, and that definition needs to apply uniformly to all taxpayers under the Federal tax law. Consequently, the Treasury Department and the IRS do not adopt this comment, and the change to the coverage month rule in the final regulations applies only for the three scenarios described in §1.36B-3(c)(4).

IV. *Applicability Date of Final Regulations*

The proposed regulations provided that the changes under §§1.36B-2 and 1.36B-3 were proposed to apply for taxable years beginning on or after the first date of the calendar year that begins after the date these regulations are published as final regulations in the *Federal Register*. Several commenters noted that State Exchanges will need to make extensive changes to their platform architecture to report for non-payment months that are coverage months under one of the three scenarios described in §1.36B-3(c)(4) and, thus, requested that the final regulations provide adequate time for states to make the necessary changes to ensure accurate reporting. One commenter stated that a 9-12-month period is generally needed to implement IT changes. Another commenter requested that the final rule include detailed scenarios addressing the applicability date. One commenter supported the proposed applicability date of the next calendar year following the date of publication.

Consistent with the proposed applicability date, the rules in these final regulations apply to taxable years beginning on or after January 1, 2025. Thus, a taxpayer may be allowed a PTC for 2025 for a non-payment month that is a coverage month as described in these final regulations. However, the Treasury Department and the IRS understand that Exchanges need time to implement their reporting for the coverage month rule in the final regulations, and some Forms 1095-A filed by State Exchanges for the 2025 coverage year may not reflect that non-payment months described in §1.36B-3(c)(4) are coverage months for which a PTC is allowed. Exchanges should do the best they can to timely implement the coverage month rule in these final regulations. Exchanges are reminded that, because section 36B(f)(3) imposes the requirement on Exchanges to report QHP enrollment information to the IRS and to Enrollees on Form 1095-A, Form 1095-A is not an information return within the meaning of section 6721, and there is no penalty imposed on an Exchange for filing a Form 1095-A that does not include all of the information required to be shown on the return or that includes incorrect information. The Treasury Department and the IRS will continue to consult with State Exchanges to assist with their implementation of the coverage month rule under these final regulations.

Finally, the proposed regulations included various applicability dates to incorporate existing applicability dates for prior amendments to the regulations under section 36B, but all of the amendments under §§1.36B-2 and 1.36B-3 in the proposed regulations were proposed to apply on the same date. Those amendments to proposed §§1.36B-2 and 1.36B-3, as finalized in these regulations, all apply to taxable years beginning on or after January 1, 2025. Thus, the Treasury Department and the IRS do not believe detailed scenarios are needed to address the final regulation's applicability date as requested by one of the commenters.

V. *Conforming Change to the PTC Calculation and Clarification of Eligibility*

As noted in Part III of the Background section of this preamble, the proposed regulations addressed two items in addition to the change to the coverage month definition. First, the proposed regulations included a proposed change that would have conformed the calculation of the monthly PTC amount under §1.36B-3(d)(1)(i) with the proposed rule allowing certain non-payment months to be coverage months. Under the proposed rule, taxpayers would have reduced the amount of the enrollment premiums used to compute their monthly PTC by any portion of the premium that is unpaid as of the unextended due date of the taxpayer's income tax return for the taxable year that includes the month. Second, the proposed regulations would have clarified §1.36B-2(c)(2)(v) to provide that an individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a State BHP, for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program. Because no negative comments or suggested changes were received with respect to these two items, this Treasury decision adopts these amendments without change.

VI. *Severability*

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

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*

These final regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. Taxpayers who claim PTC on their income tax returns are required to file Form 8962, *Premium Tax Credit (PTC)*, which is the sole collection of information requirement imposed on individuals by section 36B and the regulations under section 36B. The rules in these final regulations will require the IRS to revise the instructions for Form 8962. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)), the reporting burden associated with the collection of information for Form 8962 will be reflected in the PRA submission associated with income tax returns under the OMB control number 1545-0074. To the extent there is a change in burden because of these final regulations, the change in burden will be reflected in the updated burden estimates for Form 8962.

In addition, Exchanges are required to report to QHP enrollees on Form 1095-A certain information the enrollees need to compute the PTC allowed for the enrollee and to reconcile the PTC with any APTC paid for their coverage. Exchanges must also report this information to the IRS. The rules in these final regulations will require the IRS to revise the instructions for recipients of Form 1095-A and the instructions for Exchanges completing Form 1095-A. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)), the reporting burden associated with the collection of information for Form 1095-A will be reflected in the PRA submission associated with Form 1095-A under the OMB control number 1545-2232. To the extent there is a change in burden because of these final regulations, the change in burden will be reflected in the updated burden estimates for Form 1095-A.

III. *Regulatory Flexibility Act*

The Treasury Department and the IRS hereby certify that these 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). This certification is based on the fact that the majority of the effect of the final regulations falls on individual taxpayers, and entities will experience only small changes.

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 their impact on small business, and no comments were received.

IV. *Unfunded Mandates Reform Act*

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

V. *Executive Order 13132: Federalism*

E.O. 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 E.O. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the E.O.

VI. *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).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is 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 Clara L. Raymond of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.36B-0, adding entries in numerical order for §§1.36B-1 through 1.36B-3, and 1.36B-6, and revising the entries for §§1.36B-4, and 1.36B-5 to read in part as follows:

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

* * * * *

Section 1.36B-1 also issued under 26 U.S.C. 36B(h).

Section 1.36B-2 also issued under 26 U.S.C. 36B(h).

Section 1.36B-3 also issued under 26 U.S.C. 36B(h).

Section 1.36B-4 also issued under 26 U.S.C. 36B(h).

Section 1.36B-5 also issued under 26 U.S.C. 36B(h).

Section 1.36B-6 also issued under 26 U.S.C. 36B(h).

* * * * *

Par. 2. Section 1.36B-0 is amended by:

1. Redesignating the entries for §1.36B-3(c)(4) and §1.36B-3(c)(5) as the entries for §1.36B-3(c)(5) and §1.36B-3(c)(6), respectively; and

2. Adding a new entry for §1.36B-3(c)(4).

The addition reads as follows:

§1.36B-0 Table of contents.

* * * * *

§1.36B-3 Computing the premium assistance credit amount.

* * * * *

(c) * * *

(4) Scenarios for payments sufficient to avoid coverage termination.

* * * * *

Par. 3. Section 1.36B-2 is amended by:

1. Revising the first sentence in paragraph (c)(2)(v);

2. Revising paragraph (e)(1); and

3. Adding paragraph (e)(6).

The revisions and addition read as follows:

§1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(2) * * *

(v) * * * An individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a Basic Health Program, for a period of coverage under a qualified health plan if, when the individual enrolls in the qualified health plan, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program.* * *

* * * * *

(e) * * *

(1) Except as provided in paragraphs (e)(2) through (6) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(6) The first sentence of paragraph (c)(2)(v) of this section applies to taxable years beginning on or after January 1, 2025. The first sentence of paragraph (c)(2)(v) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2025.

Par. 4. Section 1.36B-3 is amended by:

1. Revising paragraph (c)(1)(ii);
2. Redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6), respectively, and adding new paragraph (c)(4);
3. Revising paragraph (d)(1)(i); and
4. Revising paragraph (n).

The revisions and addition read as follows:

§1.36B-3 Computing the premium assistance credit amount.

* * * * *

(c) * * *

(1) * * *

(ii) The taxpayer pays the taxpayer's share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, the full premium for the month is paid by advance credit payments, or the amount of the premium paid (including by advance credit payments) for the month is sufficient to avoid termination of the individual's coverage for that month under one of the scenarios described in paragraph (c)(4) of this section; and

* * * * *

(4) *Scenarios for payments sufficient to avoid coverage termination*. The scenarios under which the amount of the premium paid (including by advance credit payments) for the month is sufficient to avoid termination of an individual's coverage for that month under paragraph (c)(1)(ii) of this section are the following:

(i) The first month of a grace period described in 45 CFR 156.270(d) for the individual.

(ii) A month for which a premium payment threshold under 45 CFR 155.400(g) has been met and for which month the issuer of the individual's qualified health plan provides coverage.

(iii) A month for which a State department of insurance has, during a declared emergency, issued an order prohibiting the issuer of the individual's qualified health plan from terminating the individual's coverage for the month irrespective of whether the full premium for the month is paid.

* * * * *

(d) * * *

(1) * * *

(i) The enrollment premiums, which are the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls, reduced by any amounts—

(A) Refunded in the same taxable year as the premium liability is incurred; or

(B) Unpaid as of the unextended due date for filing the taxpayer's income tax return for the taxable year that includes the month, or

* * * * *

(n) *Applicability dates*.

(1) Except as provided in paragraphs (n)(2) through (4) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraphs (d)(1) (except for paragraph (d)(1)(i)) and (2) of this section apply to taxable years beginning after December 31, 2016. Paragraph (f) of this section applies to taxable years beginning after December 31, 2018. Paragraphs (d)(1) and (2) of §1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (f) of §1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

(3) Paragraphs (c)(4) through (6) of this section apply to taxable years beginning on or after January 1, 2025. Paragraph (c)(4) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years beginning after December 31, 2016, and beginning before January 1, 2025. Paragraph (c)(5) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2025.

(4) Paragraph (d)(1)(i) of this section applies to taxable years beginning on or after January 1, 2025. Paragraph (d)(1)(i) of §1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (d)(1)(i) of §1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2022, applies to taxable years beginning after December 31, 2016, and beginning before January 1, 2023. Paragraph (d)(1)(i) of §1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years beginning after December 31, 2022, and beginning before January 1, 2025.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: December 5, 2024.

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

(Filed by the Office of the Federal Register December 17, 2024, 8:45 a.m., and published in the issue of the Federal Register for December 18, 2024, 89 FR 102721)

Part III

Transitional Relief Under Sections 3403, 3406, 6721, 6722, 6651, and 6656 with Respect to the Reporting of Information and Backup Withholding on Digital Assets under Section 6045 for Digital Asset Brokers Providing Trading Front-End Services

Notice 2025-3

SECTION 1. PURPOSE

This notice provides transitional relief from penalties for certain brokers who fail to report sales of digital assets, as defined in §1.6045-1(a)(19),[1] other than digital assets not required to be reported as digital assets pursuant to §1.6045-1(c)(8)(ii), (iii), or (iv), on information returns (Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*), or fail to furnish payee statements under section 6045. The penalty relief provided by this notice is available for brokers providing trading front-end services, as described in §1.6045-1(a)(21)(iii)(A) (DeFi brokers) and is available for information returns required to be filed and payee statements required to be furnished in 2028 for sales of digital assets effected in calendar year 2027, provided that the broker makes a good faith effort to file the appropriate information return and furnish the associated payee statement accurately.

In addition, this notice provides transitional relief from the liability for the payment of backup withholding tax required to be withheld under section 3406 and its accompanying regulations as well as from penalties for DeFi brokers who fail to pay that tax with respect to certain sales of digital assets required to be reported under section 6045. Specifically, this notice provides certain relief from penalties (1) for any sale of a digital asset effected by a DeFi broker during calendar year 2027 and (2) for any sale of a digital asset effected by a DeFi broker during calendar year 2028 for a customer (payee) if the broker submits that payee's name and tax identification number (TIN) combination to the Internal Revenue Service's (IRS) TIN Matching Program and receives a response that the name and TIN combination furnished by the payee matches the name and TIN combination for that payee in IRS records. For sales effected before January 1, 2029, this notice also provides that a DeFi broker may treat a customer as an exempt foreign person if the customer has not been previously classified as a U.S. person by the DeFi broker, and the information that the DeFi broker has for the customer includes a residence address that is not a U.S. address.

This notice also provides transitional relief from penalties for DeFi brokers who fail to backup withhold and pay the full backup withholding tax due if such failure is due to a decrease in the value of withheld digital assets in a sale of digital assets in return for different digital assets effected on or before December 31, 2028, and the broker immediately liquidates the withheld digital assets for cash.

SECTION 2. BACKGROUND

.01 Section 6045 and Final Regulations

Section 6045(a) provides that every person doing business as a broker shall make a return to the IRS showing the name and address of each customer, with details regarding gross proceeds and other information as required. These rules apply when required by the Secretary of the Treasury or her delegate (Secretary) and in accordance with regulations prescribed by the Secretary. Other subsections of section 6045 require a broker to furnish a payee statement to customers, define the term broker, require basis reporting for specified securities that are also covered securities, and provide other applicable rules.

Section 80603 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) made several changes to the broker reporting provisions under section 6045 to clarify the definition of broker, to provide a definition of the term digital asset, and to expand the categories of assets for which basis reporting is required to include all digital assets.

On July 9, 2024, the Department of the Treasury (Treasury Department) and the IRS published in the Federal Register (89 FR 56480) final regulations (TD 10000) to require certain brokers to file information returns and furnish payee statements reporting gross proceeds and in certain circumstances adjusted basis on sales of digital assets effected for customers beginning for sales on or after January 1, 2025. TD 10000 applies to operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, certain processors of digital asset payments (PDAPs), owners of digital asset kiosks, brokers who accept digital assets as payment for commissions and certain other property, certain real estate reporting persons, brokers that transact as dealers in digital assets, and certain issuers of digital assets who regularly offer to redeem those digital assets. TD 10000 did not finalize the portion of the definition of broker that would have treated certain DeFi participants (referred to in the preamble to TD 10000 as non-custodial industry participants) as brokers.

On July 15, 2024, Notice 2024-56 was published in the Internal Revenue Bulletin (2024-29 I.R.B. 64) (Notice 2024-56) to provide certain transitional relief to brokers described in TD 10000 and additional transitional relief available to all brokers. Section 3.03 of Notice 2024-56 provides that backup withholding under section 3406 will not be required on any digital asset sale effected by a broker where the reportable proceeds is a specified nonfungible token until further guidance is issued. Section 3.05 of Notice 2024-56 provides that backup withholding under section 3406 will not be required on any PDAP sale effected by a PDAP until further guidance is issued.

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code, the Income Tax Regulations (26 CFR part 1), or to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31).

On December 27, 2024, final regulations (TD 10021) were filed for public inspection with the Federal Register (89 FR 106928) (final regulations) which treat certain persons as brokers that in the ordinary course of a trade or business stand ready to provide trading front-end services, as described in §1.6045-1(a)(21)(iii). Trading front-end service providers are treated as brokers when the nature of the service arrangement is such that the person providing that service ordinarily would know, or be in a position to know, within the meaning of §1.6045-1(a)(21)(ii) the nature of the transaction potentially giving rise to gross proceeds from the sale of digital assets. These brokers are required to file information returns and furnish payee statements reporting gross proceeds on sales of digital assets effected for customers beginning for sales of digital assets effected on or after January 1, 2027.

In addition to the relief provided by this notice, these DeFi brokers are also eligible for the relief provided in sections 3.03 and 3.05 of Notice 2024-56. The Treasury Department and the IRS also intend to issue a notice of proposed rulemaking under §31.3406(h)-2(b) with proposed regulations that would provide brokers with greater flexibility to satisfy their backup withholding obligations with respect to digital asset transactions.

.02 Sections 6721, 6722 and 6724

Section 6721 imposes a penalty for any failure to file an information return on or before the required filing date, and for any failure to include all the information required to be shown on the return or the inclusion of incorrect information. Section 6724(d)(1)(B)(iii) defines an information return for this purpose as a return required by section 6045(a) and (d).

Section 6722 imposes a penalty for failure to furnish a payee statement on or before the required furnishing date to the person to whom such statement is required to be furnished, and for any failure to include all the information required to be shown on a payee statement or the inclusion of incorrect information. Section 6724(d)(2)(H) defines a payee statement for this purpose as a return required by section 6045(b) or (d).

Section 6724 provides that no penalty shall be imposed under sections 6721 and 6722 if the filer (payor) shows that the failure was due to reasonable cause and was not due to willful neglect.

.03 Sections 3403 and 3406

Section 3406(a)(1) requires certain payors of reportable payments to deduct and withhold a tax on a payment at the statutory backup withholding rate (backup withholding tax) if the payee fails to furnish the payee's TIN to the payor in the manner required. Pursuant to section 3406(b)(3)(C), a reportable payment includes payments made by a broker that are required to be shown on an information return under section 6045.

Section 1.6045-1(g)(1) provides an exception to a broker's reporting of a sale of digital assets effected for a customer that is an exempt foreign person. Under §1.6045-1(g)(4)(ii)(B) and (g)(4)(vi)(A)(*1*), a U.S. digital asset broker may treat a customer as an exempt foreign person if the broker receives valid documentation upon which it may rely for this purpose (for example, Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*). Pursuant to §§31.3406(d)-1 and 31.3406(h)-3(a)(1), a payee that is not an exempt foreign person must generally furnish to the broker on a Form W-9, *Request for Taxpayer Identification Number and Certification*, the payee's TIN and certify under penalties of perjury that the furnished TIN is correct (certified TIN). Section 1.6045-1(g)(4)(vi)(F) permits a broker to treat a customer with an account established prior to January 1, 2026, as an exempt foreign person with respect to digital asset sales effected prior to January 1, 2027, if the customer has not been previously classified as a U.S. person by the broker and the information the broker has for the customer includes a residence address that is not a U.S. address.

Section 3406(a) provides that the current applicable rate of backup withholding is the fourth lowest rate of tax applicable under section 1(c) (currently 24 percent). A payor is also required to report the amount of backup withholding tax the payor withheld from the payee on Form 945, *Annual Return of Withheld Federal Income Tax*, and on the information return filed with the IRS and furnished to the payee. In the case of the Form 1099-DA, once it is approved by the Office of Management and Budget (OMB) for information collection under the Paperwork Reduction Act, the backup withholding tax withheld from the payee will be required to be reported in accordance with the instructions for that form. The payee may then report this tax as an income tax payment on the payee's Federal income tax return.

Section 3406(a)(1)(B) also requires the payor to deduct and withhold the backup withholding tax if the IRS notifies the payor that the payee has provided an incorrect name and TIN combination. The IRS notifies a payor of an incorrect name and TIN combination by sending the payor a CP2100 Notice, *Please Check Your Backup Withholding List ("Large" Payers)*, or a CP2100A Notice, *Please Check Your Backup Withholding, Contact Your Payee, and/or Update Your Records*. The CP2100 and CP2100A Notices list each payee with an incorrect name and TIN combination reported on information returns filed by the payor. Upon receiving a CP2100 Notice or a CP2100A Notice, payors must send a copy of the notice identifying the incorrect name and TIN combination to the payee and request a corrected TIN (or name) from the payee before beginning backup withholding. *See* §31.3406(d)-5 (describing these procedures, which are commonly known as B Notice procedures).

Section 3406(h)(10) provides that payments subject to withholding under section 3406 shall be treated as if they were wages paid by an employer to an employee and amounts deducted and withheld under section 3406 shall be treated as if deducted and withheld under section 3402. Accordingly, a payor of reportable payments subject to backup withholding under section 3406 is liable under section 3403 for the payment of the backup withholding tax required to be withheld.

.04 TIN Matching Program

Section 31.3406(j)-1(a) provides that the Commissioner of Internal Revenue (Commissioner) has the authority to establish TIN matching programs and may prescribe by revenue procedure or other guidance the scope and terms and conditions for participating in such programs.

Section 31.3406(j)-1(b) provides that none of the matching details received by a payor through a matching program will constitute an IRS notification regarding incorrect name and TIN combination for purposes of imposing backup withholding under section 3406(a)(1)(B).

Section 31.3406(j)-1(d) provides that the IRS will not use a payor's decision not to participate in the TIN Matching Program as a basis to assert that the payor lacks reasonable cause under section 6724(a) for failure to file a correct information return under section 6721 or to furnish a correct payee statement under section 6722.

Revenue Procedure 97-31, 1997-26 I.R.B. 6 (June 30, 1997), established procedures under which Federal agencies could submit payee names and TINs and the IRS would inform the agency whether the names and TINs matched the information in the IRS's database for the program. Revenue Procedure 2003-9, 2003-8 I.R.B. 516 (February 24, 2003), established a TIN Matching Program that permits payors to verify name and TIN combinations provided by payees that are required to be reported on information returns and payee statements. To participate in the TIN Matching Program, the payor must complete an application. Then, prior to filing an information return, a TIN Matching Program participant may check the name and TIN combination furnished by the payee against the name and TIN combination contained in the IRS-maintained database. More information is available at https://www.irs.gov/tax-professionals/taxpayer-identification-number-tin-matching. Publication 2108A, *On-Line Taxpayer Identification Number (TIN) Matching Program*, has complete program information.

.05 Sections 6651 and 6656

A payor who fails to withhold and pay backup withholding tax when required may be subject to civil penalties under sections 6651 and 6656. Section 6651 generally imposes an addition to the tax owed by a taxpayer for the failure to pay the amount shown as tax, including backup withholding tax, on a return required to be filed by the taxpayer unless the failure is due to reasonable cause and not due to willful neglect. Section 6656 provides that in the case of any failure by any person to deposit taxes on the prescribed date in an authorized government depository, a penalty applies unless the failure is due to reasonable cause and not due to willful neglect. A failure to deposit backup withholding tax as required under section 6302 would generally subject a payor to the section 6656 penalty.

SECTION 3. DISCUSSION

.01 Sales Effected in Calendar Year 2027

The final regulations under section 6045 require DeFi brokers to make information returns and furnish payee statements with respect to sales of digital assets effected on or after January 1, 2027. Sections 6721 and 6722 are applicable to brokers that fail to file those information returns and furnish those payee statements. In order to provide DeFi brokers with additional time to develop appropriate procedures to comply with these new reporting requirements, the IRS will not impose penalties under sections 6721 and 6722 on DeFi brokers that fail to file information returns and furnish payee statements under the final regulations with respect to sales of digital assets effected during calendar year 2027, provided that such brokers make good faith efforts to file accurate and timely Forms 1099-DA and furnish accurate and timely payee statements. For purposes of this notice, good faith efforts do not include any filing of returns or furnishing of payee statements made by the DeFi broker after the later of the date that the IRS first contacts the broker concerning an examination of such broker or one year after the original due date for filing such returns.

The final regulations under section 3406 and §31.3406(b)(3)-2 apply to reportable payments by a DeFi broker to a payee with respect to sales of digital assets on or after January 1, 2027, that are required to be reported under section 6045. Because the final regulations require DeFi brokers to report digital asset sales effected during calendar year 2027 and because these brokers may not have enough time to obtain a certified TIN from a payee prior to the date of a digital asset sale by that payee during 2027, the Treasury Department and the IRS are postponing the application of backup withholding with respect to sales of digital assets for an additional year to provide DeFi brokers with additional time to develop appropriate procedures for collecting certified TINs from customers and to otherwise comply with the backup withholding requirements on digital asset sales. Accordingly, backup withholding under section 3406 will not be required on any digital asset sale effected by DeFi brokers during calendar year 2027.

.02 Sales Effected in Calendar Year 2028

Section 3406 backup withholding applies to reportable digital asset sales if the broker has not obtained the payee's certified TIN. DeFi brokers subject to section 6045 reporting for digital asset sales may experience challenges in obtaining certified TINs from all payees that are existing customers. Accordingly, for digital asset sales effected in calendar year 2028, the IRS will permit DeFi brokers to rely on TINs provided by payees that are not certified if those uncertified TINs were provided by payees prior to January 1, 2028, and if the broker, prior to effecting the digital asset sale transaction, submits the payee's name and TIN combination to the IRS's TIN Matching Program and receives a response that the name and TIN combination furnished by the payee matches the name and TIN combination for that payee in the IRS records.

.03 Sales Effected Before January 1, 2029

To provide additional time for DeFi brokers to collect the necessary documentation to treat existing customers as exempt foreign persons, the IRS will permit DeFi brokers to treat a customer as an exempt foreign person for sales of digital assets effected before January 1, 2029, as set forth in the following sentence. A DeFi broker may apply this transitional rule only if the customer has not been previously classified as a U.S. person by the DeFi broker, the information that the DeFi broker has for the customer includes a residence address that is not a U.S. address, and this information was provided by the customer prior to January 1, 2028.

.04 Amount of Backup Withholding

In the case of a sale of a digital asset for different digital assets, the value of the digital assets received in such sales can change between the time of the transaction and the time the received digital assets are liquidated into U.S. dollars for depositing with the IRS. To provide DeFi brokers additional time to develop appropriate backup withholding procedures, the amount of backup withholding tax required to be withheld and paid as a tax under section 3406 shall be limited to the amount that such broker receives upon the liquidation of 24 percent of the customer's received digital assets, notwithstanding that such amount may be less than 24 percent of customer's received digital assets at the time of the transaction giving rise to the backup withholding obligation, provided such liquidation is undertaken immediately after the transaction giving rise to the backup withholding liability. The amount that the broker receives upon liquidation should be reported as Federal income tax withheld on Form 1099-DA. This amount should also be included on the broker's Form 945. Accordingly, the IRS will not impose penalties under section 6651 or 6656 with respect to any decrease in the value of received digital assets between the time of the transaction giving rise to the backup withholding obligation and the time the broker liquidates 24 percent of the received digital assets. Finally, the IRS will not impose penalties on DeFi brokers that are required to file Form 945 with respect to the backup withholding tax due as described in this section 3.04 with respect to digital asset sales, provided such broker pays and reports the amount of backup withholding tax that is withheld and deposited with the IRS in accordance with this section 3.04. For this purpose, a broker that systemically liquidates the received digital assets when received as part of its services effectuating sales will be treated as immediately liquidating the received digital assets.

The relief provided by this section 3.04 applies only to the amount required to be withheld and paid as described in this section 3.04 and the requirement to file information returns and payee statements pertaining to reportable digital asset sales effected before January 1, 2029.

SECTION 4. EFFECTIVE DATE

This notice is effective December 27, 2024.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please call (202) 317-5436 (not a toll-free number).

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26 CFR 601.601: Rules and Regulations.
(Also Part I, Section 5000D; § 47.5000D-3.)

Rev. Proc. 2025-9

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor and safe harbor percentage that a manufacturer, producer, or importer may use to identify applicable sales of a designated drug made during a day described in section 5000D(b) of the Internal Revenue Code.[1]

SECTION 2. BACKGROUND

.01 Section 5000D imposes an excise tax on the applicable sales of a designated drug made during a day described in section 5000D(b) (section 5000D tax). For additional background, *see* section 3.01 of Notice 2023-52, 2023-35 I.R.B. 650.

.02 In conjunction with the publication of this revenue procedure, the Department of the Treasury and the Internal Revenue Service (IRS) are publishing a notice of proposed rulemaking that contains proposed regulations issued under section 5000D (REG-115560-23) in the ***Federal Register***. The proposed regulations would provide definitions and proposed rules relating to the imposition and calculation of the section 5000D tax.

.03 Section 47.5000D-3(a)(4)(iv) of the proposed regulations would provide a safe harbor under which a manufacturer, producer, or importer may identify the applicable sales of a designated drug made during a day described in section 5000D(b) by using a safe harbor percentage provided in guidance published in the Internal Revenue Bulletin (IRB). This revenue procedure provides a similar safe harbor, including a safe harbor percentage, that a manufacturer, producer, or importer may use until the proposed regulations are finalized or other guidance is published in the IRB or the ***Federal Register***.

SECTION 3. DEFINITIONS

Terms used in this revenue procedure and not defined herein have the same meaning as in section 5000D and the proposed regulations.

SECTION 4. SCOPE

The safe harbor provided in section 5.01 of this revenue procedure and the safe harbor percentage provided in section 6.01 of this revenue procedure may be used by any manufacturer, producer, or importer of a designated drug that makes a sale of such designated drug during a day described in section 5000D(b).

SECTION 5. SAFE HARBOR

.01 *Overview*. A manufacturer, producer, or importer may identify the applicable sales of a designated drug made during a day described in section 5000D(b) by using the safe harbor percentage provided in section 6.01 of this revenue procedure, provided that the manufacturer, producer, or importer satisfies the requirements described in section 5.02 of this revenue procedure.

.02 *Requirements.*

(1) *Must use safe harbor for four consecutive calendar quarters*. Except as provided in section 6.02 of this revenue procedure, a manufacturer, producer, or importer that uses the safe harbor described in section 5.01 of this revenue procedure must use the safe harbor for a period of four consecutive calendar quarters, beginning with the calendar quarter in which the safe harbor is first used.

(2) *Uniform application required*. A manufacturer, producer, or importer that uses the safe harbor described in section

[1] Unless otherwise specified, all "Section" or "§" references are to sections of the Internal Revenue Code (26 U.S.C. 1, et seq.) or the Designated Drugs Excise Tax Regulations (26 CFR part 47).

5.01 of this revenue procedure for sales of units of any designated drug made during any day described in section 5000D(b) falling within a calendar quarter must apply the safe harbor to all sales by such manufacturer, producer, or importer during all days described in section 5000D(b) falling within that calendar quarter. Thus, if a manufacturer, producer, or importer uses the safe harbor described in section 5.01 of this revenue procedure with respect to one sale of a designated drug during a day described in section 5000D(b), it must use the safe harbor for all sales of that designated drug and all sales of any other designated drug that occur in that calendar quarter during a day described in section 5000D(b).

.03 *Recalculation of liability not permitted*. Once a section 5000D tax liability is reported to the IRS for a particular calendar quarter using the safe harbor described in section 5.01 of this revenue procedure and the safe harbor percentage described in section 6.01 of this revenue procedure, the manufacturer, producer, or importer liable for the section 5000D tax may not later recalculate its section 5000D tax liability for that quarter using a different method to identify its applicable sales. Once a section 5000D tax liability is reported to the IRS for a particular calendar quarter using a method other than that described in section 5.01 of this revenue procedure and the safe harbor percentage described in section 6.01 of this revenue procedure, the manufacturer, producer, or importer may not later recalculate its section 5000D tax liability using the safe harbor described in section 5.01 of this revenue procedure and the safe harbor percentage described in section 6.01 of this revenue procedure.

.04 *No election required*. No election is required for a manufacturer, producer, or importer to use the safe harbor described in section 5.01 of this revenue procedure.

SECTION 6. SAFE HARBOR PERCENTAGE

.01 *Overview*. For purposes of this revenue procedure, the "safe harbor percentage" is 40 percent. The percentage represents the mean, rounded to the nearest 10 percent, of the quotient of the total units associated with Medicare Part D prescription drug fills (that is, the "quantity dispensed" field reported by plan sponsors in prescription drug event records) and the units of total retail pharmacy sales reported by manufacturers to the Centers for Medicare & Medicaid Services (CMS) through average manufacturer price (AMP) data for qualifying single-source drugs for the period from June 1, 2022, through May 31, 2023, removing qualifying single source drugs with missing AMP units, zero AMP units reported, or with greater than 100 percent of Medicare units or sales as a proportion of AMP units or sales. A conversion factor was applied to the Medicare Part D prescription drug units when necessary to make them comparable to AMP units.

.02 *Updates to safe harbor percentage*. Any update to the safe harbor percentage described in section 6.01 of this revenue procedure will use a calculation methodology similar to that described in such section, use the most recent analysis that the IRS has received from CMS of data available to CMS, and relieve a manufacturer, producer, or importer from an existing obligation under section 5.02(1) of this revenue procedure to use the safe harbor described in section 5.01 of this revenue procedure as of the effective date of such updated safe harbor percentage. If a manufacturer, producer, or importer continues to use the safe harbor described in section 5.01 of this revenue procedure after the safe harbor percentage is updated, such manufacturer, producer, or importer must use the updated safe harbor percentage on and after the effective date of such updated safe harbor percentage and for the remainder of any period required by section 5.02(1) of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for returns filed on or after December 31, 2024, and will remain in effect through the day before the effective date of superseding guidance published in the IRB or the ***Federal Register***.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact at (202) 317-6855 (not a toll-free number).

[26 CFR 601.401] Employment Taxes
(Also: Sections 3102, 3111, 3301, 3403, 31.3102-1, 31.3111-4, 31.3301-1, 31.3403-1)

Rev. Proc. 2025-10

SECTION 1. PURPOSE

.01 The purpose of this revenue procedure is to provide updated guidance regarding the implementation of section 530 of the Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763, as amended (section 530) (addressing controversies involving whether individuals are employees for purposes of employment taxes).[1] This revenue procedure modifies and supersedes Revenue Procedure 85-18, 1985-1 CB 518.

.02 This revenue procedure clarifies the provisions of Rev. Proc. 85-18 with respect to the definition of employee, the section 530 requirement for the filing of required returns, and the reasonable basis safe harbor rules. This revenue procedure also amplifies the guidelines set forth in section 3.03 of Rev. Proc. 85-18 (interpreting the word "treat" for purposes of determining whether a taxpayer did not treat an individual as an employee for purposes of section 530(a)).

.03 This revenue procedure includes new provisions that reflect statutory changes made to section 530 since 1986

[1] The uncodified statutory language of section 530 is included as Attachment 1 of this revenue procedure. The statutory language of section 530 can also usually be found in the publisher's notes following § 3401(a).

that added sections 530(d), (e), and (f).[2] Section 530(d) is discussed in section 3.09. Section 530(f) is discussed in section 3.10. Section 530(e) is discussed throughout this revenue procedure.

.04 The provisions in Rev. Proc. 85-18 that explained how refunds, credits, abatements, and handling of claims applied to taxpayers who were under audit or otherwise involved in administrative or judicial processes with the Internal Revenue Service (IRS) at the time of enactment of section 530 are no longer applicable and have been omitted from this revenue procedure.

.05 Section 530 relief remains available at any stage in the administrative or judicial process if the requirements for relief are met.

SECTION 2. BACKGROUND

.01 Section 530 (entitled "Controversies Involving Whether Individuals are Employees for Purposes of Employment Taxes") was originally enacted as a temporary measure[3] to provide relief for taxpayers who were involved in employment status (worker classification) disputes with the IRS, and who faced large employment tax assessments as a result of the IRS's proposed reclassifications of workers. Section 530 was extended indefinitely by the Tax Equity and Fiscal Responsibility Act of 1982.[4] Section 530 is not part of the Internal Revenue Code (Code).

.02 Section 530 provides that a taxpayer will not be liable for federal employment taxes, with respect to an individual or class of workers if certain statutory requirements are met. Under section 530, the taxpayer, not the individual worker[5], is eligible for relief from the employment tax liability that would otherwise apply under subtitle C of the Code, and any related interest or penalties attributable to that employment tax liability. The taxes imposed by subtitle C include the Federal Insurance Contributions Act (FICA) taxes, the Railroad Retirement Tax Act (RRTA) taxes,[6] the Federal Unemployment Tax Act (FUTA) taxes, and the collection of income tax at source on wages (income tax withholding).

.03 Section 530(a) generally provides that if, for purposes of the employment taxes under subtitle C of the Code, a taxpayer did not treat an individual as an employee for any period, then the individual will be deemed not to be an employee for that period, unless the taxpayer had no reasonable basis for not treating the individual as an employee. For any period after December 31, 1978, the relief applies only if, pursuant to section 530(a)(1)(B), all federal tax returns (including information returns) required to be filed by the taxpayer with respect to the individual for the period are filed on a basis consistent with the taxpayer's treatment of the individual as not being an employee, and, pursuant to section 530(a)(3), the taxpayer has not treated any individual holding a substantially similar position as an employee for purposes of employment taxes for any period beginning after December 31, 1977.

.04 Section 530(a)(1)(A) provides that a taxpayer is entitled to relief if the taxpayer "did not treat an *individual* as an *employee*" for purposes of employment taxes (emphasis added). The legislative history demonstrates that section 530 applies exclusively to taxpayers involved in employment status controversies with the IRS. Specifically, the legislative history explains that the relief measure was for taxpayers that were "involved in employment tax status controversies" and explains that the legislation prevents the IRS from reclassifying certain individuals as employees whom the taxpayer has treated as independent contractors. S. Rep. No. 95-1263, at 210 (1978). Likewise, the Joint Committee on Taxation report on section 530 explains that "the Act provides relief from employment tax liability to certain taxpayers involved in employment tax *status* controversies with the Internal Revenue Service as a result of the Service's proposed reclassification of workers, whom taxpayers have considered as having independent contractor status." Staff of Joint Committee on Taxation, 95th Cong., General Explanation of the Revenue Act of 1978, at 301 (Comm. Print 1979) (emphasis added).

.05 Section 530 relief applies only if the taxpayer did not treat the individual as an employee for federal employment tax purposes for the period at issue and meets each of the following requirements for such period:

(1) The taxpayer filed all required federal tax returns, including information returns, on a basis that is consistent with the taxpayer's treatment of the individual as not being an employee (reporting consistency requirement);

(2) The taxpayer did not treat the individual or any individual holding a substantially similar position as an employee (substantive consistency requirement); and

(3) The taxpayer had a reasonable basis for not treating the individual as an employee (reasonable basis requirement). A taxpayer shall be treated as having a reasonable basis if the taxpayer's treatment was in reasonable reliance on any of the following:

(a) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer (judicial precedent);

(b) a past IRS audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding substantially similar positions (prior audit);

(c) long-standing recognized practice of a significant segment of the industry in which that individual was engaged (industry practice); or

(d) If the taxpayer had some other reasonable basis for not treating the individual as an employee.

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[2] Section 530(d) was added by the Tax Reform Act of 1986, Pub. L. No. 99-514, Title XVII, § 1706(a), 100 Stat. 2085. Section 530(e) was added by the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, Title I, § 1122(a), 110 Stat. 1755, 1766. Section 530(f) was added by the Pension Protection Act of 2006, Pub. L. No. 109-280, Title VIII, § 864(a), 120 Stat. 780, 1024.

[3] H.R. Rep. No. 95-1748, 95th Cong., 2nd Sess. 4 (1978), 1978-3 C.B. (Vol. 1) 629 at 632, notes that, in general, the bill was intended to provide an interim solution for controversies between the Internal Revenue Service and taxpayers.

[4] Pub. L. No. 97-248, Title II, § 269(c)(1), (2), 96 Stat. 324, 552.

[5] Section 530 relief does not extend to individual workers who remain liable for their personal employment taxes.

[6] For purposes of simplicity, discussion of the RRTA is not included in this revenue procedure. However, the same rules discussed in this revenue procedure apply for purposes of the RRTA.

.06 Section 530(b) prohibits the Department of the Treasury from publishing regulations or revenue rulings "with respect to the employment status of any individual for purposes of the employment taxes." This revenue procedure, like Rev. Proc. 85-18, does not violate that prohibition because it only provides guidance clarifying the application of section 530. Furthermore, this guidance is neither a regulation nor a revenue ruling that addresses the classification of any individual or category of worker.

SECTION 3. APPLICATION AND SCOPE OF SECTION 530

.01 Worker Classification Controversies. Section 530 applies only when a taxpayer did not treat an individual as an employee for employment tax purposes, and the IRS is proposing to reclassify the individual from a non-employee to an employee. Thus, section 530 relates solely to worker classification controversies involving the employment status of an individual as an employee or as an independent contractor (or other non-employee).

.02 Employee. For purposes of section 530, the term "employee"[7] includes:

(1) an officer of a corporation under §§ 3121(d)(1), 3306(i), or 3401(c)[8] of the Code;

(2) an individual, who under the common law rules, has the status of an employee under §§ 3121(d)(2) or 3306(i);

(3) agent-drivers, commission-drivers, full-time life insurance salespersons, home workers or traveling or city salespersons under §§ 3121(d)(3) (statutory employees) or 3306(i);

(4) an individual who performs services that are included under an agreement pursuant to Section 218 or Section 218A[9] of the Social Security Act (218 Agreement) under § 3121(d)(4) of the Code; and

(5) an officer, employee or elected official of a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of the foregoing under § 3401(c).[10]

.03 Treatment of an Individual as an Employee[11]. The IRS applies the following guidelines when determining whether there was "treatment" of an individual as an employee for a period within the meaning of section 530(a)(1):

(1) The withholding of income tax or FICA taxes from any payments made to an individual, whether or not the tax is paid to the IRS, indicates "treatment" of the individual as an employee.

(2) Except as provided in paragraphs (6) and (7) below, the filing of an original or amended employment tax return (including a Form 940 "Employer's Annual Federal Unemployment Tax Return," 941 "Employer's Quarterly Federal Tax Return," 943 "Employer's Annual Tax Return for Agricultural Employees," or 944 "Employer's ANNUAL Federal Tax Return"), with respect to an individual, whether or not tax was withheld from the payments made to the individual, indicates "treatment" of the individual as an employee.

(3) The filing of Schedule H (Form 1040), Household Employment Taxes, with respect to an individual, whether or not tax was withheld from the payments made to the individual, indicates "treatment" of the individual as an employee.

(4) The filing of a Form W-2 "Wage and Tax Statement" with respect to an individual, or the furnishing of a Form W-2 to an individual, whether or not tax was withheld from the payments made to the individual, indicates "treatment" of the individual as an employee.

(5) Contracting with a third party to perform acts required of employers with respect to an individual, whether or not tax is withheld or paid to the IRS or the third party otherwise satisfies the terms of the contract, indicates "treatment" of the individual as an employee.

(6) The filing of a delinquent or amended employment tax return for a particular tax period with respect to an individual as a result of IRS collection or examination activities or other compliance procedures, does not indicate "treatment" of the individual as an employee for that period. IRS correspondence that merely advises the taxpayer that no return has been filed and requests information from the taxpayer is not a compliance procedure. However, if the taxpayer takes any of the actions identified in section 3.03 with respect to those individuals in a later period (for example, the taxpayer withholds employment taxes or files employment tax returns with respect to those individuals for the periods following the period audited), those actions indicate "treatment" of the individuals as employees for those later periods.

(7) A return prepared by the IRS under § 6020(b) for a period is not "treatment" of an individual as an employee for that period.

.04 Notice of Section 530 Relief. In accordance with section 530(e)(1), the IRS will provide written notice of the availability of section 530 treatment before or at the start of any employment tax audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer or when it appears that a determination concerning worker classification will be made.

.05 Consideration of Section 530 Relief. In accordance with section 530(e)(3), in any employment tax audit of a tax-

[7] Although the definition of "employment status" in section 530(c)(2) and the legislative history to section 530 suggests that the provision was meant to address controversies involving the status of individuals under the usual common law rules applicable in determining the employer-employee relationship as an employee or independent contractor, the IRS has long taken a broader view of the definition of employee with respect to whom the relief may potentially apply, both in published guidance and in litigation. Compare S. Rep. No. 95-1263, at 210 (1978), *and* Staff of Joint Committee on Taxation, 95th Cong., General Explanation of the Revenue Act of 1978, at 301 (Comm. Print 1979), with Rev. Rul. 82-83, 1982-1 CB 151.

[8] Contrary to the decision in *Joseph M. Grey Public Accountant, P.C. v. Commissioner*, 119 T.C. 121 (2002), it is the IRS's longstanding position that relief under section 530 with respect to corporate officers may be available if the requirements of section 530 are met.

[9] Pursuant to the Tribal Social Security Fairness Act of 2018, Pub. L. No. 115-243, 132 Stat. 2894, federally recognized Indian Tribes may enter into 218A agreements extending voluntary Social Security coverage to Indian Tribal Council members, and § 3121(d)(4) of the Code includes within the definition of "employee" any individual who performs services that are included under a 218A agreement.

[10] The IRS interprets section 530(a) as allowing a state or local government to obtain section 530 relief for both FICA and federal income tax withholding purposes, provided that the requirements of section 530 are met. See Chief Counsel Memorandum 20203810.

[11] See section 3.08 for a discussion on the treatment of dual status workers.

payer relating to the employment status of any individual who performs services for the taxpayer, the IRS will first consider whether the taxpayer has satisfied the requirements of section 530 before analyzing whether the individuals are employees.[12]

.06 Payment Characterizations do not Qualify for Section 530 Relief. Based on the language of section 530(a)(1) and the legislative history of section 530, the IRS considers the relief to apply only to matters involving the status of an individual as an employee or non-employee and not to matters involving the proper characterization of payments to that individual. Specifically, section 530 does not apply to controversies concerning whether a particular type of payment made to an employee constitutes "wages" as defined under the FICA, FUTA, or income tax withholding provisions. Nor does section 530 apply to the issue of whether services performed by an employee constitute "employment" as defined under the FICA, FUTA, or income tax withholding provisions. Matters involving exceptions from "wages" and "employment" involve the proper characterization of payments made to employees, or services provided by employees, as defined under the FICA, FUTA, or income tax withholding provisions. Section 530 is not applicable to these matters because they do not involve an issue concerning whether the individual is an employee or non-employee. These matters involve the issue of whether the payment made to an employee is exempt from employment taxes under a particular provision of the Code (because the payment is not wages or the services are not employment).

Accordingly, in determining if section 530 applies, the IRS will first determine whether the matter involves the proper classification of an individual as an employee, or the proper characterization of a payment as "wages," or of services as "employment."

.07 Dual Status Workers. In unusual cases, an individual may perform services for a taxpayer that are completely separate and distinct from the services giving rise to the employment relationship, and the individual may be separately compensated for those services. For the services performed outside of the employment relationship to be completely separate and distinct from the services performed within the employment relationship, there must be no interrelation as to duties or remuneration in each capacity.[13] In circumstances where an individual performs services for a taxpayer in separate and distinct capacities, the status of the individual as an employee or non-employee, and the application of section 530, will be considered separately with respect to each distinct relationship under which the separate services are provided.

.08 Treatment of Dual Status Workers. In the circumstances described in section 3.07, a taxpayer may have treated an individual as an employee in one distinct relationship but may assert that section 530 applies to another distinct relationship (referred to here as the "second relationship") because the individual was being compensated for performing other services separate from the services the individual performed as an employee. As in all cases, with respect to the second relationship, the IRS will first determine whether the matter involves the issue of the proper classification of an individual as an employee, or the proper characterization of a payment as "wages," or of services as "employment" (consistent with section 3.06) before analyzing whether the taxpayer is entitled to relief under section 530.

.09 Treatment of Certain Technical Personnel. Section 530(d) provides that section 530 does not apply in the case of an individual who, through an arrangement between the taxpayer and another person, provides services for the other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. Thus, whether an individual retained by a taxpayer to provide technical services to a client is an employee of the taxpayer for purposes of liability for employment taxes will be determined under the usual common law rules without applying section 530.

.10 Treatment of Test Room Supervisors and Proctors. Section 530(f) provides that, for periods after December 31, 2006, section 530 relief may apply to services performed by an individual as a test proctor or room supervisor who assists in the administration of college entrance or placement examinations for a § 501(c) organization, exempt from tax under § 501(a) of the Code, regardless of whether the § 501(c) organization previously treated the individual, or an individual holding a substantially similar position, as an employee.

.11 Federal Agencies. Section 530 relief is not available to taxpayers that are federal agencies.

.12 Abatement and Refund. If a taxpayer is relieved of liability for employment taxes under section 530, the IRS will abate any assessed liability and refund any payment of the assessed tax related to the worker reclassification issue, including applicable penalties and interest for any tax periods for which the period of limitations has not expired.

SECTION 4. REPORTING CONSISTENCY REQUIREMENT

.01 To obtain section 530 relief, a taxpayer must satisfy the reporting consistency requirement in section 530(a)(1)(B). The reporting consistency requirement is intended to ensure that the taxpayer acted in good faith in treating the individuals as non-employees. S. Rep. No. 95-1263, at 210 (1978).

.02 Reporting consistency requires a taxpayer to file all required federal tax returns with respect to an individual for the period, on a basis consistent with the good faith treatment of the individual by the taxpayer as a non-employee. Section

[12] Section 530(e)(3) provides that for purposes of the availability of the safe harbors in section 530(a) "[n]othing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer." The legislative history explains that section 530(e)(3) was added solely to reverse the IRS's prior position that a worker classification determination must be performed prior to consideration of whether a taxpayer is entitled to section 530 relief. H.R. Rep. No. 104-737, at 199-204 (1996) (Conf. Rep.). Thus, section 530(e)(3) does not act to extend relief to disputes involving whether a payment is wages or whether performance of services is employment.

[13] See Rev. Rul. 58-505, 1958-2 CB 728 (finding that officers, President and Secretary, of a company were dual status workers because the services they performed as officers and as salesmen were not interrelated and that they were performing services in two separate and unrelated capacities; holding that these individuals were employees for federal employment tax purposes with respect to duties performed by them as officers of the company, but were not employees for such purposes with respect to their selling activities).

530(a)(1)(B). *See also* Rev. Rul. 81-224, 1981-2 CB 197. For example, if a taxpayer's position is that an individual was an independent contractor for a taxable period, the taxpayer must have filed all required Forms 1099 consistent with its position that the individual was an independent contractor for the period, reporting the payments for services for which the taxpayer is treated as a non-employee. All relevant returns will be considered in determining whether the taxpayer satisfies the requirement that all required returns be filed on a basis consistent with good faith treatment by the taxpayer of an individual as a non-employee.[14]

.03 Reporting consistency must be satisfied on a period-by-period basis. A taxpayer that filed information returns for one period but that did not file information returns for a prior or subsequent period may satisfy the reporting consistency requirement only for the period for which it filed information returns. For example, if a taxpayer whose position is that an individual was an independent contractor did not file Forms 1099-NEC "Nonemployee Compensation", in year 1, but did file Forms 1099-NEC in year 2, the taxpayer is not entitled to section 530 relief in year 1 but may be entitled to section 530 relief for year 2 if it otherwise meets the requirements for section 530 relief for that year.

.04 Reporting consistency must be satisfied on an individual-by-individual basis. A taxpayer that filed information returns for some individuals but that did not file information returns for other individuals may satisfy the reporting consistency requirement only for the individuals for whom it filed information returns. For example, if a taxpayer whose position is that an individual was an independent contractor filed Forms 1099-NEC for individual workers A, B, and C in year 1, but did not file Forms 1099-NEC for individual workers D, E, and F in year 1, the taxpayer is not entitled to section 530 relief for individuals D, E, and F for year 1. The taxpayer may be entitled to section 530 relief for individual workers A, B, and C in year 1 if it otherwise meets the requirements for section 530 relief for that year. If the taxpayer files Forms 1099-NEC for all the individuals in year 2, the taxpayer may be entitled to section 530 relief for all the individuals in year 2 if it otherwise meets the requirements for section 530 relief for that year.

.05 A taxpayer will not fail the reporting consistency requirement if the taxpayer, in good faith, mistakenly files the wrong type of information return or, as long as the return demonstrates a good faith attempt to accurately report the amount paid, reports an inaccurate amount paid. Moreover, a taxpayer will not fail the reporting consistency requirement if the taxpayer was not required to file an information return because, for example, the taxpayer paid the individual less than the threshold amount required to file a Form 1099.

SECTION 5. SUBSTANTIVE CONSISTENCY REQUIREMENT

.01 To obtain section 530 relief, a taxpayer must satisfy the substantive consistency requirement in section 530(a)(3). The substantive consistency requirement is intended to ensure that section 530 relief applies only to a taxpayer that has consistently treated all individuals holding substantially similar positions as non-employees. It prevents a taxpayer from changing its treatment of employees to non-employees to qualify for section 530 relief, including through reincorporation, reorganization, name change, or otherwise. H.R. Rept. 95-1748 (1978), reprinted in 1978-3 (Vol. 1) C.B. 629.

.02 Substantive consistency requires that a taxpayer or a predecessor not have treated an individual, or any individual holding a substantially similar position, as an employee for any period beginning after December 31, 1977. Pursuant to section 530(e)(6), the determination of whether an individual holds a position substantially similar to a position held by another individual includes consideration of the relationship between the taxpayer and the individual. Accordingly, a substantially similar position exists if the job functions, duties, and responsibilities are substantially similar and the control and supervision of those duties and responsibilities are substantially similar.

.03 In determining if a taxpayer has treated an individual, or any individual holding a substantially similar position, as an employee for purposes of the substantive consistency requirement, the IRS will apply the same guidelines as described in section 3.03.

.04 Treatment of an individual, or an individual holding a substantially similar position, as an employee in a period subsequent to the period under audit will not cause a taxpayer to fail the substantive consistency requirement for the period under audit or prior periods under audit.

.05 Entering into a Classification Settlement Program (CSP) or Voluntary Classification Settlement Program (VCSP) agreement with the IRS with respect to an individual will be considered treatment of the individual as an employee for substantive consistency purposes from the effective date of the agreement.

SECTION 6. REASONABLE BASIS REQUIREMENT

.01 To obtain section 530 relief with respect to an individual, a taxpayer must satisfy the reasonable basis requirement provided in sections 530(a)(1)(B) and (e). The reasonable basis requirement is intended to ensure that the taxpayer reasonably considered the worker classification status of the individual as an employee or non-employee prior to making the classification decision.

.02 Reasonable basis requires a taxpayer to demonstrate that it reasonably relied on one of the safe harbors in section 530(a)(2), or it had another reasonable basis for treating the individual as a non-employee, before it treated the individual as a non-employee for the period under audit.

.03 Section 530(a)(2) provides that for purposes of satisfying section 530(a)(1),

[14] In no event will a return filed after the date on which the IRS first contacts the taxpayer concerning an examination of the period to which the return relates be considered as filed on a basis consistent with good faith treatment by the taxpayer of an individual as a non-employee. Additionally, section 530 relief is not available for any year and for any worker for whom the taxpayer did not file the required returns. *See*, e.g., *Bruecher Foundation Services, Inc. v. US* 383 Fed.Appx. 381 (5th Cir. 2010), holding that a taxpayer filing returns after assessment is not entitled to use Section 530 as a defense in a subsequent judicial proceeding.

a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the safe harbors listed in section 2.05(3)(a), (b), and (c). The IRS considers the following when determining whether there was reasonable reliance on a safe harbor:

(1) Judicial precedent or published rulings, whether or not relating to the particular industry or business in which the taxpayer is engaged, or technical advice, a letter ruling, or a determination letter issued to the taxpayer under audit.

(a) Reliance on judicial precedent or published rulings requires that the taxpayer reasonably relied upon the judicial precedent or published rulings at the time it began treating the individual as a non-employee for the tax period under audit.

(b) Thus, a taxpayer does not meet this safe harbor if the judicial precedent that the taxpayer relied on was issued after the tax period for which the taxpayer treated the individual as a non-employee.

(2) A past IRS audit that resulted in no assessment of employment taxes attributable to the employment status reclassification of individuals holding positions substantially similar to the position held by the individual.

(a) If a taxpayer is relying on the results of an audit that began before 1997, the audit does not have to have been an audit of whether the same individuals, or individuals holding substantially similar positions, should have been treated as employees of the taxpayer, so long as the prior audit did not result in an assessment of employment taxes attributable to the IRS's reclassification of the same individuals, or individuals holding substantially similar positions.

(b) If a taxpayer is relying on the results of an audit that began after 1996, the audit must have been an employment tax examination of the same individuals, or individuals holding substantially similar positions, that did not result in a reclassification of the same individuals or individuals holding substantially similar positions.

(c) A taxpayer does not meet this safe harbor if, in the conduct of the prior audit, a proposed assessment attributable to the IRS's reclassification of the individual was offset by other claims asserted by the taxpayer.

(d) A taxpayer does not meet this safe harbor if the relationship between the taxpayer and the individuals during the period under audit is different from that which existed at the time of the prior audit.

(e) A taxpayer does not meet this safe harbor if the prior audit began after 1996 and was only for purposes of determining a taxpayer's liability for failure to subject a reportable payment to backup withholding, as required by § 3406 of the Code and accompanying regulations, if the workers' underlying worker classification was not examined, since the imposition of backup withholding liabilities does not involve the reclassification of workers by the IRS.

(3) A long-standing recognized practice of a significant segment of the industry in which the individual was engaged.

(a) Reliance on industry practice requires that the taxpayer reasonably relied upon the industry practice at the time it began treating the individual as a non-employee for the tax period under audit.

(b) An industry generally consists of businesses located in the same geographic or metropolitan area that compete for the same customers. However, if the area includes only one or a few businesses in the same industry, or if the business competes in regional or national markets, the geographic area may be expanded.

(c) 25 percent of the taxpayer's industry (determined by not taking into account the taxpayer) is deemed to be a significant segment of the industry. A lower percentage may be a significant segment, depending on the facts and circumstances.

(d) A practice that has existed for 10 years is deemed to be long-standing. A shorter period may be long-standing, depending on the facts and circumstances.

.04 A taxpayer that does not meet any of the three safe harbors enumerated in section 2.05(3)(a), (b), or (c), may still satisfy the reasonable basis requirement in section 2.05(3)(d) if the taxpayer can demonstrate by facts and circumstances that it relied on another reasonable basis for treating the individual as a non-employee.

.05 The legislative history of section 530 states that the reasonable basis requirement should be construed liberally in favor of the taxpayer. H.R. Rept. 95-1748 (1978), reprinted in 1978-3 (Vol. 1) C.B. 629, 633. Liberal construction of the reasonable basis requirement does not mean that the reporting consistency and substantive consistency requirements for obtaining section 530 relief should be liberally construed. Rather, the Congressional direction to liberally construe the reasonable basis requirement means the facts that indicate whether the taxpayer reasonably relied on one of the safe harbors in section 530(a)(2) are to be viewed liberally in favor of the taxpayer. Failure to satisfy the reporting consistency or substantive consistency requirements for section 530 relief is not cured by the application of liberal construction of the reasonable basis requirement.

.06 Consistent with the legislative history of section 530, a taxpayer is not considered to have a reasonable basis for its treatment of individuals as non-employees if the facts and circumstances indicate negligence, intentional disregard of rules and regulations, or fraud. S. Rep. No. 95-1263, at 211 (1978).

.07 When considering whether a taxpayer had a reasonable basis to treat an individual as a non-employee for employment tax purposes, if the taxpayer cannot demonstrate reasonable reliance on any of the safe harbors listed in 2.05(3)(a), (b), and (c), then, if factually relevant, the IRS may consider and the taxpayer may raise facts demonstrating whether the taxpayer considered the individual as an employee for other purposes, including whether the taxpayer during the years under audit:

(1) claimed income tax deductions, or treated payments made to or on behalf of the individual as excludable from income, under provisions of the Code that are applicable only to employees, including under §§ 62(a)(2)(A), 105, 106, 117(d), 119, 127, 129, 132 (portions thereof), or 137 of the Code;

(2) claimed employer credits such as credits for paid sick and/or family leave under sections 7001 and/or 7003 of the Families First Coronavirus Response Act or §§ 3131 through 3133 of the Code, the Employee Retention Credit under either § 2301 of the Coronavirus Aid, Relief, and

Economic Security Act or § 3134 of the Code, or any other credits specified in future guidance that are calculated with respect to wages or compensation paid to an employee;

(3) complied with federal or state labor law including minimum wage and overtime pay rules with respect to the individual that are applicable to employees or treated workers as employees for purposes of state or non-tax federal laws;

(4) treated the individual as an employee for purposes of collectively bargained agreements entered into by the taxpayer;

(5) permitted participation of the individual in any qualified pension, profit-sharing, or stock bonus plan;

(6) permitted participation of the individual in any nonqualified deferred compensation plan if such participation is limited to employees of the taxpayer;

(7) provided state unemployment insurance or worker's compensation insurance coverage for such individual if the requirements for obtaining such state unemployment or worker's compensation insurance is that coverage is limited to individuals performing services for the taxpayer as common law employees under the common law rules or persons that would qualify as employees for federal employment tax purposes.

SECTION 7. BURDEN OF PROOF

.01 In accordance with section 530(e)(4), if a taxpayer establishes a prima facie case that it had a reasonable basis for not treating an individual as an employee for 530 purposes — in other words, it meets the reporting consistency requirement, the substantive consistency requirement, and one of the reasonable basis safe harbors enumerated in section 530(a)(2)(A), (B), and (C) — and the taxpayer has fully cooperated with reasonable requests from the IRS, then the burden of proof with respect to that treatment will shift to the IRS.

.02 The shift in the burden of proof does not apply with respect to the reasonable basis requirement if the taxpayer relied on some other reasonable basis for treating the individual as a non-employee. *See* section 530(e)(4)(B); H.R. Rep. No. 104-737, at 203-04 (1996) (Conf. Rep.).

SECTION 8. STATUS OF INDIVIDUALS

.01 Section 530 does not change the status, liabilities, and rights of the individual whose classification is at issue. It does not convert individuals from employees to self-employed individuals.

.02 If a taxpayer receives section 530 relief for a class of workers, that taxpayer is relieved from having to withhold income tax and withhold and pay FICA taxes from payments made to members of that class of workers. However, if any individual member or members of that class of workers is otherwise determined to be an employee of the taxpayer, each such employee remains liable for their employee share of FICA tax pursuant to § 31.3102-1(d) of the Employment Tax regulations.[15] Employees who incorrectly paid the self-employment tax may file a claim for refund if the period of limitations has not expired; however, the amount of any refund may be offset by the amount of the employee's share of FICA tax as a result of the application of § 31.3102-1(d). If the period of limitations to claim a refund of self-employment tax has expired, § 6521 of the Code may authorize a credit against the employee share of FICA tax owed in the amount of self-employment tax that was erroneously paid.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 85-18, 1985-1 CB 518, is modified and superseded.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective when published in the Internal Revenue Bulletin.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Kelli Cacciotti of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Cacciotti at (202) 317-6798 (not a toll-free number).

[15] A worker or a firm can file a Form SS-8 to request a worker status determination under the common law rules for purposes of federal employment taxes and income tax withholding. For additional information on the Form SS-8, see www.irs.gov/forms-pubs/about-form-ss-8.

Attachment 1[16]

Section 530. Controversies Involving Whether Individuals are Employees for Purposes of Employment Taxes.

(a) Termination of certain employment tax liability.—

(1) In general.—If—

(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

(2) Statutory standards providing one method of satisfying the requirements of paragraph (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

(3) Consistency required in the case of prior tax treatment.—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

(4) Refund or credit of overpayment.—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act [Nov. 6, 1978].

(b) Prohibition against regulations and rulings on employment status.—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

(c) Definitions.—For purposes of this section—

(1) Employment tax.—The term "employment tax" means any tax imposed by subtitle C of the Internal Revenue Code of 1954.

(2) Employment status.—The term "employment status" means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

(d) Exception.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

(e) Special rules for application of section.—

(1) Notice of availability of section.—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

[16] Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763, as amended by P.L. 96-167, P.L. 96-541, P.L. 97-248, P.L. 99-514, P.L. 104-188, and P.L. 109-280.

(2) Rules relating to statutory standards.—For purposes of subsection (a)(2)—

(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

(ii) a practice shall not fail to be treated as long standing merely because such practice began after 1978.

(3) Availability of safe harbors.—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

(4) Burden of proof.—

(A) In general.—If—

(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate, then the burden of proof with respect to such treatment shall be on the Secretary.

(B) Exception for other reasonable basis.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

(5) Preservation of prior period safe harbor.—If—

(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period, then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

(6) Substantially similar position.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

(f) Treatment of test room supervisors and proctors who assist in the administration of college entrance and placement exams.—

(1) In general.—In the case of an individual described in paragraph (2) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, this section shall be applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to subsection (a)(3) thereof.

(2) Applicability.—An individual is described in this paragraph if the individual—

(A) is providing the services described in subsection (a) to an organization described in section 501(c), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986, and

(B) is not otherwise treated as an employee of such organization for purposes of subtitle C of such Code (relating to employment taxes).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2025-11

SECTION 1. PURPOSE

This revenue procedure provides the process under § 48E(h) of the Internal Revenue Code (Code)[1] to apply for an allocation of capacity limitation (Capacity Limitation) as part of the Clean Electricity Low-income Communities Bonus Credit Amount Program (Program) for 2025 and subsequent years. Receipt of an allocation increases the amount of the clean electricity investment credit determined under § 48E(a) (§ 48E credit) for the taxable year in which the applicable facility, with which the allocation of Capacity Limitation is associated, is placed in service. This revenue procedure provides guidance regarding the application process, including application review, documentation requirements, and placed in service reporting requirements. This revenue procedure also provides information on the requirements specific to the Additional Selection Criteria (ASC) application options, including documentation submission requirements. Additionally, this revenue procedure describes how the Capacity Limitation will be divided across the facility categories, and information on the placed in service reporting requirements.

SECTION 2. BACKGROUND

Section 13702 of Public Law 117–169, 136 Stat. 1818, 1921 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new § 48E(h) to the Code. Section 48E(h) increases the amount of the § 48E credit with respect to eligible property that is part of an applicable facility that is awarded an allocation of Capacity Limitation as part of the Program. The amount of § 48E credit for a taxable year is calculated by multiplying the qualified investment for such taxable year with respect to any qualified facility placed in service during that taxable year by the applicable percentage (as defined in § 48E(a)(2)). Section 48E(h) increases the § 48E credit by increasing the applicable percentage used to calculate the amount of the § 48E credit (§ 48E(h) Increase).

Section 48E(h)(4) directs the Secretary of the Treasury or her delegate (Secretary) to establish a program to allocate amounts of Capacity Limitation to applicable facilities.

On September 3, 2024, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published a notice of proposed rulemaking (REG-108920-24) under § 48E(h). Final regulations were published on January 13, 2025.

SECTION 3. APPLICABLE FACILITY

.01 *In general*. To be eligible to apply for and receive an allocation of Capacity Limitation, and to later claim the § 48E(h) Increase, a facility must be an applicable facility as defined under § 48E(h)(2)(A) and § 1.48E(h)-1(b). Eligibility as an applicable facility includes the requirement under § 48E(h)(2)(A) and § 1.48E(h)-1(b)(1) that the facility be a qualified facility, as defined in § 48E(b)(3), and is a non-combustion and gasification (Non-C&G Facility) that the Secretary has determined has a greenhouse gas (GHG) emissions rate of not greater than zero.

.02 *Types of Qualified Facilities*. Under § 1.48E(h)-1(b)(1) and consistent with Treasury Department and IRS guidance under §§ 45Y and 48E, the following types or categories of qualified facilities are categorically Non-C&G Facilities with a GHG emissions rate that is not greater than zero, and may be eligible for an allocation of Capacity Limitation: wind (including small wind properties), hydropower (including retrofits that add power production to non-powered dams, conduit hydropower, hydropower using new impoundments, and hydropower using diversions such as a penstock or channel), marine and hydrokinetic, solar (including photovoltaic and concentrated solar power), geothermal (including flash and binary plants), nuclear fission, fusion energy, and waste energy recovery property (WERP) that derives energy from any of the energy sources described in this list. Under § 1.48E(h)-1(b)(1), the types or categories of qualified facilities that are Non-C&G Facilities are determined based on Treasury Department and IRS guidance in effect as of the opening date of that Program year.

SECTION 4. CAPACITY LIMITATION AVAILABLE FOR ALLOCATION

.01 *Annual Capacity Limitation*. The amount of Capacity Limitation available for allocation through the application process provided in this revenue procedure is limited to the annual Capacity Limitation of 1.8 gigawatts of direct current (DC) capacity, as specified at § 48E(h)(4)(C), plus any unallocated Capacity Limitation carried over from the previous Program year, as required under § 48E(h)(4)(D)(i) and (ii) (specifically for the carryover of unallocated capacity from calendar year 2024 under § 48(e) to calendar year 2025). If any Capacity Limitation is remaining when a Program year closes, then that Capacity Limitation will be carried over to the next Program year as described in section 4.06 of this revenue procedure.

.02 *Distribution of Annual Capacity Limitation*. As provided in § 1.48E(h)-1(g)(1), the annual Capacity Limitation available for allocation is divided across the four facility categories described in § 48E(h)(2)(A)(iii) and § 1.48E(h)-1(b)(2). For each Program year, the annual Capacity Limitation of 1.8 gigawatts (as measured in DC) is distributed across the categories as shown in Table 1.

Table 1

Category 1: Located in a Low-Income Community	600 megawatts
Category 2: Located on Indian Land	200 megawatts
Category 3: Qualified Low-Income Residential Building Project	200 megawatts
Category 4: Qualified Low-Income Economic Benefit Project	800 megawatts

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

.03 *Category 1 sub-reservations*. The reservation for Category 1 is further subdivided for each Program year into a sub-reservation for eligible residential behind the meter (BTM) facilities as described in §§ 1.48E(h)-1(g)(2) and 1.48E(h)-1(i)(2)(ii), and a sub-reservation for front of the meter (FTM) facilities described in §§ 1.48E(h)-1(g)(2) and 1.48E(h)-1(i)(2)(iii), and non-residential BTM facilities that meet the requirements of §§ 1.48E(h)-1(g)(2) and 1.48E(h)-1(i)(2). The Category 1 reservation from the annual Capacity Limitation distribution is divided into further sub-reservations as shown in Table 2.

Table 2

Eligible Residential BTM Facilities	400 megawatts
Eligible FTM Facilities and Non-residential BTM Facilities	200 megawatts

.04 *Additional Selection Criteria Reservation*. At the beginning of each application period for a Program year, 50 percent of the Capacity Limitation in each category or Category 1 sub-reservation is reserved for ASC applicants, as provided for under § 1.48E(h)-1(h)(1) and section 8.03(1) of this revenue procedure.

.05 *Redistribution of Capacity Limitation within a Program year.* If, at the close of the application period (as described in section 5.04 of this revenue procedure and § 1.48E(h)-1(j)(4)) for a given Program year, there are undersubscribed categories or sub-reservations, the remaining Capacity Limitation will be redistributed to the oversubscribed categories or sub-reservations in the manner provided in § 1.48E(h)-1(g)(3).

.06 *Carryover of Unallocated Capacity Limitation.* If, after redistributing Capacity within a Program year, as described in section 4.05 of this revenue procedure, there is remaining unallocated Capacity Limitation, that Capacity Limitation will be carried over to the next Program year. Carried over Capacity Limitation will be equally divided, rounded to the nearest kilowatt, and distributed across the categories as described in § 1.48E(h)-1(g)(4). The carried over Capacity Limitation will be further equally divided within each category as described in § 1.48E(h)-1(g)(4).

SECTION 5. GENERAL APPLICATION PROCESS

.01 *In general*. An applicant (described in section 6 of this revenue procedure) must apply for an allocation of Capacity Limitation through the online applicant portal system (Portal), at https://eco.energy.gov/licbonus. The Portal is also linked at https://www.irs.gov/credits-deductions/low-income-communities-bonus-credit or https://www.irs.gov/licBonusCredit (Program homepage). The application must contain all information, documentation, and attestations specified in section 7 of this revenue procedure. Additional guidance material and a User Guide with detailed instructions for Portal use are linked on the Program homepage.

.02 *Selection of the appropriate category or sub-reservation*. In the Portal, applicants must select an application option for a particular facility category, as described in § 1.48E(h)-1(b)(2) (that is, Category 1 Facility, Category 2 Facility, Category 3 Facility, or Category 4 Facility). If the applicant is applying in Category 1, the applicant must also select the appropriate Category 1 sub-reservation described in § 1.48E(h)-1(i) (that is, eligible residential BTM facilities or eligible FTM facilities and non-residential BTM facilities located in low-income communities). Additionally, eligible applicants who plan to apply under the ASC described in § 1.48E(h)-1(h) must select the ASC application option in each Category or Category 1 sub-reservation. Applications will not be moved to a different facility category or Category 1 sub-reservation. Applicants that should be considered in a different Category or Category 1 sub-reservation must withdraw the application for the option under which the applicant originally applied for a particular applicable facility and create a new application under the appropriate option. If an applicant applies under two ASC criteria and it is determined that the application does not meet one of the two claimed ASC types of criteria, that application will be updated and processed as satisfying one ASC criterion in the same Category or Category 1 sub-reservation. Additionally, if an applicant applies under either one or two ASC criteria, and it is determined that the application does not meet any claimed ASC criteria, that application will be moved to non-ASC in the same Category or Category 1 sub-reservation.

.03 *One application*. Applicants may only submit one application per applicable facility per Program year. For an applicable facility that has integrated operations with one or more other qualified facilities, as described in § 1.48E-1(b)(3)(iv), and is still eligible for the Program, applicants may only submit one application for that applicable facility (including any other qualified facilities with integrated operations). If, after submitting an application for an applicable facility, the applicant decides that it would rather have the facility considered for an allocation under a different facility category or Category 1 sub-reservation, or under an ASC criteria if previously not submitted as ASC, the applicant must withdraw the first application and submit a new application under the intended facility category or Category 1 sub-reservation. If it is identified that an applicant has submitted more than one application for a single applicable facility (and the applicant has not withdrawn the previously submitted application(s)), any application submitted after the first submitted application will be considered a duplicate application and will be treated as withdrawn.

.04 *Application period.* For Program year 2025, the application period will open on January 16, 2025 at 9:00 AM Eastern Standard Time (EST), and close on the first Friday in August 2025 at 11:59 PM EST. Beginning for Program year 2026, and for each subsequent year of the Program, the application period will open the first Monday in February at 9:00 AM EST and close the first Friday in August at 11:59 PM EST. See section 8.02(1) of this revenue procedure for information on the application review process and the initial 30-day period for application submission.

SECTION 6. APPLICANT

.01 *In general*. The owner of the applicable facility is the person who must apply for an allocation of Capacity Limitation. If the facility is determined to be eligible for an allocation, and there is Capacity Limitation available to allocate, the owner of the applicable facility is the recipient of the allocation of Capacity Limitation. In addition to being the owner of the applicable facility, the applicant should be the taxpayer that intends to claim the underlying § 48E credit to which the § 48E(h) Increase will be applied, provided facility ownership is not transferred after allocation (as discussed in section 12 of this revenue procedure).

.02 *Disregarded entities*. A disregarded entity cannot be an applicant. If an applicable facility is owned by an entity that is disregarded as separate from its owner for federal income tax purposes, the owner of the disregarded entity, also known as the regarded entity, is the owner of the facility and must be the applicant. If a disregarded entity improperly registers as another entity type and applies as a regarded entity, then any applications submitted by that entity are invalid. The IRS relies on the information the taxpayer submits at registration as the applicant. If the IRS allocates an amount of Capacity Limitation to an applicant, and later discovers that the applicant is a disregarded entity, the IRS will rescind the allocation of Capacity Limitation. This section also applies to sole proprietorships where the disregarded entity is owned by a single person.

.03 *Tribal Enterprise.* For entities wholly owned and chartered under Tribal law and corporations incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124 or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203, an application may be made as a Tribal Enterprise.

.04 *Partnerships and S corporations*. If an applicable facility is owned by a partnership or S corporation, then the partnership or S corporation, and not its partners or shareholders, is the owner of the facility and is the applicant. For unincorporated organizations that have made or will make an election under § 761(a) to be excluded from the application of subchapter K of chapter 1, the organization, and not its members, is still the applicant that must register and apply for the allocation.

SECTION 7. APPLICATION

.01 *In general*. Applications for the Program can only be completed and submitted through the Portal. Applicants must register in the Portal before they can begin the application process.

.02 *Registration*.

(1) An individual who is legally authorized to bind the applicant entity for federal income tax purposes must first create a login.gov account before the individual can access and register the applicant in the Portal. After a login.gov account has been created, the user can then register the taxpayer as the applicant in the Portal. Each applicant that intends to submit applications must separately register for the Portal. The individual registering the applicant must create a separate login.gov account for each applicant on behalf of which the individual will be completing and submitting an application or applications. See the Applicant User Guide, which is linked on the Program Homepage, for more information on creating a login.gov account and for detailed instructions on the Portal Registration requirements, as updated.

(2) The user that created the login.gov account and that is registering the applicant must enter their name and email address in the Organization Contact section. This person is completing the application as the applicant and, therefore, must be legally authorized to bind the applicant. Third-party representatives, which includes general employees, are not qualified to register or apply for an applicant.

(3) The "organization" on the registration page is the applicant. The information provided at registration for the "organization's name" and "taxpayer identification number (TIN)" must be the applicant's information.

(4) The applicant's federal tax classification must be provided under "organization type." A Limited Liability Company (LLC) is a business structure allowed by state statute and is not a federal tax classification. When registering an LLC, determine the correct federal tax classification of the LLC before proceeding. An LLC that is a disregarded entity cannot be an applicant.

(5) Registrants must attest to the following attestation: "Under penalty of perjury, I attest that the applicant is not a disregarded entity as described in Treas. Reg. §§ 301.7701-2(a) and 301.7701-3. I attest that the applicant is either a per se corporation as defined in § 301.7701-2(b) or, if the entity is an eligible entity as defined in §301.7701-3(a), it has either (i) more than one owner, partner, member, or shareholder or (ii) filed an election to be classified as an association taxable as a corporation. I further attest that the applicant has not filed an election to be classified as a qualified REIT subsidiary (within the meaning of § 856(i)(2)), or a qualified subchapter S subsidiary (within the meaning of § 1361(b)(3)(B))." This attestation is included in the Portal, and by proceeding with the registration process and submitting this attestation, the registrant will be treated as having signed the attestation.

.03 *Application Submission*. The applicant must submit their application, including any required information, documentation, and attestations required by section 7 of this revenue procedure, under penalties of perjury. The person completing and submitting the application must have personal knowledge of the facts related to the application and be a person who is legally authorized to (1) bind the applicant entity for federal income tax purposes, including providing, under penalties of perjury, the attestations under sections 7 and 10.02 of this revenue procedure; (2) communicate with reviewers about the application prior to and after submission of the application;

and (3) receive notifications, letters, and other communications from reviewers and the IRS. For example, an application may be authorized by an officer of a corporation, a general partner of a state law partnership, a trustee on behalf of a trust, or the proprietor in the case of a sole proprietorship. The person submitting the application must attest, through the Portal, that they have the requisite authority to legally bind the applicant with respect to federal income tax matters. This person must also first register in the Portal as explained in section 7.02(1).

.04 *Applicant Information*. The application must include the following identifying information of the applicant.

(1) The name of the applicant;

(2) The unique TIN for the applicant. Unless a transfer request is reviewed and approved by the IRS or the unincorporated organization has made a § 761(a) election to be excluded from the application of subchapter K of chapter 1 (see section 13 of this revenue procedure), the TIN of the applicant must match the TIN of the taxpayer that will claim the credit under § 48E(a) in addition to the applicable percentage increase under § 48E(h), or, in the case of a partnership or S corporation, the partnership or S corporation that owns the facility when it is placed in service;

(3) The applicant's address;

(4) If the applicant is a subsidiary corporation of a consolidated group filing a consolidated federal income tax return, the legal name and federal taxpayer identification number of the parent corporation of the consolidated group; and

(5) Any other information required by publicly available written procedures on the Program Homepage.

.05 *Applicable Facility Information*.

(1) *In general*. For any applicable facility described in section 3.01 of this revenue procedure, the application requires the applicant to provide the information described in sections 7.05(2) and 7.05(3) of this revenue procedure, and any other information required by publicly available written procedures provided on the Program Homepage.

(2) *Applicable facility maximum net output and nameplate capacity*.

(a) *Applicable facility with nameplate capacity measured in alternating current.* Applicants seeking an allocation for an applicable facility with a nameplate capacity measured in alternating current (AC) must report the expected maximum net output of the facility in AC. If an applicable facility has integrated operations with one or more other qualified facilities and is still eligible for the Program, then the sum of the nameplate capacity of the applicable facility and each other qualified facility must be reported, consistent with § 1.48E(h)-1(b)(3)(iv). Applicable facilities with a nameplate capacity measured in AC that are selected for an allocation will be awarded an amount of Capacity Limitation in DC that is equal to the facility's reported nameplate capacity in AC.

(b) *Applicable facility with nameplate capacity measured in direct current*. Applicants seeking an allocation for an applicable facility with a nameplate capacity measured in DC (such as solar facilities) must report the nameplate capacity of the facility in DC and the expected maximum net output of the facility as measured in AC, to ensure the facility meets the less than 5 megawatts (MW) (as measured in AC) requirement under § 48E(h)(2)(A)(ii). If an applicable facility has integrated operations with one or more other qualified facilities and is still eligible for the Program, then the sum of the nameplate capacity of the applicable facility and each other qualified facility must be reported, consistent with § 1.48E(h)-1(b)(3)(iv). Applicable facilities with a nameplate capacity measured in DC that are selected for an allocation will be awarded an amount of Capacity Limitation in DC that is equal to the facility's reported nameplate capacity in DC.

(3) *Facility location*. Applicants must provide the location of the applicable facility, including street address (if applicable) and coordinates (latitude and longitude). Applicants should provide a single address and a single set of coordinates.

.06 *Documentation*.

(1) *In general*. Applicants must submit the documentation specified in sections 7.06(2) and 7.06(3) of this revenue procedure with an application for an allocation of Capacity Limitation. An application is not complete and may be rejected if any required documentation is not included.

(2) *Facility documentation for all categories*. As specified in Table 3, the following documents are required for each applicable facility for which an application is submitted:

Table 3

Document Requirement	FTM[2]	BTM[3] <= 1 MW AC	BTM > 1 MW AC
One of the following documents, in its entirety, inclusive of any amendments, appendices, consumer disclosures, and schedules thereto, executed by each party[4] on or before the date of application submission: 1) If the applicant will *not* execute a lease or a power purchase agreement (PPA) with respect to the facility, an executed contract for the installation of the facility owned by the applicant (for example, an engineering, procurement, and construction contract). For purposes of meeting this requirement, if the applicant will self-install the facility, the applicant must submit a contract to purchase the energy generation equipment. 2) If the applicant will execute a lease with respect to the facility, an executed contract to lease the facility between the applicant (as the lessor) and the lessee. 3) If the applicant will execute a PPA with respect to the facility, an executed power purchase agreement for the generation by the facility between the applicant and the offtaker of the electricity generated.	No	Yes	Yes
A copy of the final, executed interconnection agreement, if applicable (see below), executed by each party on or before the date of application submission. If the facility is located in a market where the interconnection agreement cannot be countersigned by the interconnecting utility prior to completion of construction or interconnection of the facility, the applicant must provide: 1) A copy of the submitted interconnection agreement with proof of submission or offer signed by the applicant (or its agent), 2) a copy of the final completed interconnection screen/study, and 3) either a conditional approval letter that identifies the specific facility from the interconnecting utility or an affidavit stating that, based on the interconnecting utility's guidance, the facility's interconnection agreement cannot be countersigned by the interconnecting utility and executed until after construction of the facility. If an interconnection agreement is not applicable to the facility (for example, due to utility ownership), the interconnection agreement requirement is satisfied by a final written decision from a Public Utility Commission, cooperative board, or other governing body with sufficient authority that financially authorizes the facility. If the facility is under a utility jurisdiction that does not require a study or additional approvals after interconnection application submission, then the applicant must provide proof of interconnection application submission and either public utility guidance or an executed letter from the utility that states that the applicable facility has completed all interconnection requirements.	Yes	No	Yes

[2] As defined in § 1.48E(h)-1(i)(2)(iii), for the purposes of the Program, an applicable facility is front of the meter (FTM) if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, FTM is defined as a facility that is not BTM. For the purposes of Category 4, an applicable facility is also FTM if 50 percent or more of its electricity generation on an annual basis is physically exported to the broader electricity grid.

[3] As defined in § 1.48E(h)-1(i)(2)(i), an applicable facility is behind the meter (BTM) if (1) it is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located, (2) it is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid), and its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This definition also includes systems not connected to a grid and that may not have a utility service meter and that have a primary purpose of serving the electricity demand of the owner of the site where the system is located.

[4] If the applicant is not a party named in the contract, the applicant must provide with the applicable contract a statement explaining why the applicant is not named in the contract and the relationship between the appropriate entity named in the contract and the applicant. The applicant must be the owner of the applicable facility to be eligible to apply for an allocation of Capacity Limitation.

Document Requirement	FTM[2]	BTM[3] <= 1 MW AC	BTM > 1 MW AC
If the facility is on land under the regulatory authority of a Tribe (including its political subdivisions, agencies, or instrumentalities, and Tribal Enterprises), Alaska Native Corporation, or the Department of Hawaiian Homelands, the applicant must provide: 1) a Notice to Proceed issued by the applicable governing authority within the relevant Tribe, Alaska Native Corporation, of the Department of Hawaiian Home Lands, and 2) a copy of the submitted interconnection screen/study or a notice of intent to enter into a PPA. For 1), the Notice to Proceed issued by the relevant authority should be a notice, letter, or resolution that clearly states the following information: 1) the applicant (or taxpayer) name, 2) energy facility location (address), 3) a description of the energy facility, 4) timeline of facility development, and 5) clear approval from the relevant regulatory authority that the facility has been evaluated and is ready to proceed. For 2), if an interconnection agreement is not applicable to the facility (for example, due to utility ownership), the interconnection agreement requirement is satisfied by the Notice to Proceed issued under the regulatory authority of a Tribe (including its political subdivisions, agencies, or instrumentalities, and Tribal Enterprises), Alaska Native Corporation, or the Department of Hawaiian Homelands	Yes	No	Yes

(3) *Category 3 facility specific documentation*. Applicants applying for an allocation under Category 3 must provide documentation demonstrating that the applicable facility will be installed on an eligible residential rental building and a Benefits Sharing Statement as described under § 1.48E(h)-1(e)(6)(i).

(a) *Eligible Housing Programs*. Section 48E(h)(2)(B)(i) requires a facility to be installed on a residential rental building that participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)), a housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949, a housing program administered by a tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22)), or any other affordable housing program identified by the Department of the Treasury. The eligible residential rental building (and not just its tenants) must participate in an eligible housing program. The Treasury Department and the IRS, in consultation with other Federal agencies, developed a list of Federal housing programs and policies that meet the requirements in § 48E(h)(2)(B)(i):

- Department of Housing and Urban Development (HUD) section 202 Supportive Housing for the Elderly, including the direct loan program under section 202.
- HUD section 811 Supportive Housing for Persons with Disabilities.
- HUD Housing Opportunities for Persons With AIDS (HOPWA) program.
- HUD homeless programs under title IV of the McKinney-Vento Homeless Assistance Act, including the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Stability Assistance program.
- HUD HOME Investment Partnerships (HOME) program.
- Federal Housing Administration (FHA) mortgage insurance under section 221(d)(3) subsidized with a below-market interest rate (BMIR) prescribed in the proviso of section 221(d)(5) of the National Housing Act.
- HUD's section 236 interest rate reduction payments.
- HUD Public Housing assisted under section 9 of the United States Housing Act of 1937.
- HUD project-based rental assistance and project-based vouchers under section 8 of the United States Housing Act of 1937.
- HUD section 8 Moderate Rehabilitation Program.
- HUD section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals.
- USDA section 515 Rural Rental Housing.
- USDA section 514/516 Farm Labor Housing.
- USDA section 538 Guaranteed Rural Rental Housing.
- USDA section 533 Housing Preservation Grant Program.
- Treasury/IRS Low-Income Housing Credit under § 42.

- HUD National Housing Trust Fund.
- Veterans Administration (VA) Comprehensive Service Programs for Homeless Veterans.
- VA grant program for homeless veterans with special needs.
- VA financial assistance for supportive services for very low-income veteran families in permanent housing.
- Department of Justice transitional housing assistance grants for victims of domestic violence, dating violence, sexual assault, or stalking.
- Housing assistance programs administered by the USDA under title V of the Housing Act of 1949.
- Housing programs administered by an Indian Tribe or a Tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22)).
- Housing programs administered by the Department of Hawaiian Home Lands (DHHL) as defined in Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (24 CFR 1006.10), Hawaiian Homestead Associations (HHA) as defined in 43 CFR 48.6, and DHHL or HHA lands administered by Native Hawaiian Organizations as defined in 13 CFR 124.3.

(b) *Category 3 facility draft Benefits Sharing Statement*. Applicants to Category 3 must create and submit a draft Benefits Sharing Statement that includes the information described under § 1.48E(h)-1(e)(6). This draft Benefits Sharing Statement must include a calculation of the facility's gross financial value, a calculation of the facility's net financial value, a calculation of the financial value required to be distributed to building occupants, a description of the means through which the required financial value will be distributed to building occupants, and which entity will be responsible for the distribution of benefits to the occupants. A Benefits Sharing Statement template is linked on the Program homepage. A final Benefits Sharing Statement must be submitted as part of placed in service reporting as described under section 10 of this revenue procedure.

(4) *Category 4 facility draft Demonstration of Financial Benefits statement*. Applicants applying for an allocation under Category 4 must provide a draft Demonstration of Financial Benefits statement (as defined in § 1.48E(h)-1(f)(3)) demonstrating that the financial benefits requirements will be met based on the expected annual energy produced by the as-built facility at placed in service and during the recapture period under § 48E(h)(5) and § 1.48E(h)-1(n). This draft Demonstration of Financial Benefits statement must include a calculation of the total financial benefits of annual electricity production, the percent of the total financial benefits provided and/or assigned to Qualifying Households, the bill credit discount rate method used (with cost to participate or no or nominal cost of participation), a calculation of the bill credit discount rate, and a description of the means of distributing the required benefits to Qualifying Households. A final statement must be submitted as part of placed in service reporting as described under section 10 of this revenue procedure. The documentation described under § 1.48E(h)-1(f)(3)(vi) to demonstrate that the facility is enrolled in a utility tariff, program, or other arrangement used to distribute financial benefits to Qualifying Household is not required at application. This documentation will be submitted as part of the final Demonstration of Financial Benefits statement as part of placed in service reporting. An example draft Demonstration of Financial Benefits statement is linked on the Program homepage.

.07 *Attestations*. All applicants must make all the required attestations in Table 4 of this revenue procedure. The attestations in Table 4 are included as part of the application in the Portal. These attestations will appear at the end of each application, prior to submission. An applicant will be unable to submit their application if any required attestations are not completed. The person who registered the applicant and who is completing the application as the applicant, will be deemed to have signed the attestations upon submitting the application. If this person is not legally authorized to bind the applicant, as explained in section 7.03, and this person nonetheless completes the application, then the attestations and application are invalid.

Table 4

Attestations
I attest that the owner of the applicable facility has site control of the real property on which the facility will be installed and placed in service through ownership of the real property, an executed lease for the real property, or a site access agreement or similar agreement between the real property owner and the applicant.
For an applicable facility on lands under 25 U.S.C. 3501(2)(A)-(C) (Indian Land), I attest that I have obtained the applicable approval of the Tribal government or Alaska Native Corporation landowner. For an applicable facility not on Indian Land, complete this attestation to attest that the facility is not on Indian Land.
I attest that the applicable facility has obtained all applicable federal, state, tribal, and local non-ministerial permits for the facility, or that the facility is not required to obtain such permits.[5]

[5] Non-ministerial permits are permits in which one or more officials or agencies consider various factors and exercise some discretion in deciding whether to issue or deny permits. This does not include ministerial permits based upon a determination that the request complies with established standards such as electrical or building permits. Non-ministerial permits typically come with conditions and usually require public notice or hearings. Examples of non-ministerial permits include local planning board authorization, conditional use permits, variances, and special orders.

Attestations
I attest that when performing the activities that support this application, I was, or will be, in compliance with all relevant federal, state, and local laws, including consumer protection provisions, and safety obligations, and that the applicant did not and will not engage in any unfair or deceptive acts or practices.
I attest that the applicable facility is sized, or that customer/offtaker subscriptions will be sized, to meet the customer's energy needs, considering historical customer load and/or reasonable future load projections, and is in accordance with applicable state and local requirements.
I attest that any end-use customer(s)/offtaker(s) of the applicable facility have and/or will receive consumer disclosures informing them of their legal rights and protections prior to executing a contract to subscribe or purchase power from the facility or lease a facility.
I attest that the applicable facility has not been placed in service at the time of this submission and will not be placed in service prior to being awarded an allocation of Capacity Limitation.
I declare that I am authorized to legally bind [the applicant]. Under penalties of perjury, I declare that I have examined this submission, including any accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete. I authorize the Internal Revenue Service and its contractors and reviewers (including the Department of Energy) to verify the information provided in this submission. Such verification may include, but is not limited to, conducting independent research via public maps, the internet, publicly available sources, and other sources.

.08 *Ownership Criteria documentation and attestation*. In addition to the information, documentation, and attestations required above, any applicant purporting to meet the ASC for Ownership Criteria, as described under § 1.48E(h)-1(h)(2), must submit with their application the documentation specified below to demonstrate that they meet the Ownership Criteria.

(1) *Tribal Enterprise*. An applicant claiming to be a Tribal Enterprise, as described under § 1.48E(h)-1(h)(2)(iii), must provide proof of inclusion of its Indian Tribal government (Tribal government) owner on the current list of Tribal entities recognized and eligible for funding and services by the Bureau of Indian Affairs (BIA).

(2) *Alaska Native Corporation*. An applicant claiming to be an Alaska Native Corporation (ANC), as described under §1.48E(h)-1(h)(2)(iv), must provide a copy of the relevant portions of the ANC's articles of incorporation and bylaws demonstrating that it is an ANC pursuant to 43 U.S.C. 1602(m) (and any relevant amendments), including the first page with the title of the document and, if applicable, the signature pages.

(3) *Native Hawaiian Organization*. An applicant claiming to be a Native Hawaiian Organization (NHO), as described under §1.48E(h)-1(h)(2)(v), must provide documentation that denotes that an entity is a NHO under 13 CFR 124.3. This may include their articles of incorporation, bylaws, or other documentation that showcases a designation of NHO such as a Small Business Administration certification.

(4) *Renewable Energy Cooperative*. An applicant that claims to be a Renewable Energy Cooperative, as described under § 1.48E(h)-1(h)(2)(vi), must provide a copy of its articles of incorporation and bylaws. The applicant must highlight the relevant language in these documents that demonstrates the entity meets either the consumer/purchasing cooperative requirements under § 1.48E(h)-1(h)(2)(vi)(A) or is a worker cooperative controlled by its worker-members with each member having an equal voting right as described under § 1.48E(h)-1(h)(2)(vi)(B).

(5) *Qualified tax-exempt entity*. An applicant claiming to be a qualified tax-exempt entity described in § 1.48E(h)-1(h)(2)(vii) must provide documentation supporting its claim as described below.

(a) An applicant claiming to be described in § 501(c)(3), § 501(c)(12), or § 501(d) must provide the following:

(i) If its exempt status is recognized by the IRS at the time of application submission, proof of listing in IRS Pub. 78, *Cumulative List of Organizations Described in § 170(c)* (see the "Tax Exempt Organization Search" page on the IRS website), or in the Exempt Organizations Business Master File Extract (also available on the IRS website), such as a screenshot within the last 30 days, or, if issued within the last 12 months, a copy of its IRS determination letter or a letter from the IRS affirming its exempt status. *See* Pub. 4573, *Group Exemptions*, for information on group exemptions and returns.

(ii) If its exempt status has never been recognized by the IRS, a copy of its annual information return or notice under § 6033 filed within the last two years (if it has so filed). Section 501(c)(3) and 501(c)(12) organizations file a Form 990-series return or notice such as Form 990, *Return of Organization Exempt from Tax*. Section 501(d) organizations file Form 1065, *U.S. Return of Partnership Income.*

(iii) If an applicant's exempt status has never been recognized by the IRS and it has not filed an annual information return or notice within the last two years, the applicant must provide other documentation demonstrating that it is described in § 501(c)(3), § 501(c)(12), or § 501(d) (such as its governing documents) and demonstrating that it is currently excepted from, or otherwise in compliance with, its exemption application requirements and information return filing requirements, unless it is a church or a convention or association of churches described in § 170(b)(1)(A)(i), in which case it may submit the following attestation, uploaded by the applicant in the Portal, signed by a person authorized to bind the entity: "*Solely for purposes of the § 48E(h) credit, I certify that [insert applicant name] is a* *church or a convention or association of churches described in § 170(b)(1)(A)(i). I further certify that I am an officer of the Entity and that I am duly authorized to sign this statement on behalf of the Entity.*"

(iv) An applicant described in § 501(c)(12) must also demonstrate that it is a corporation that operates on a cooperative basis and explain, in a statement uploaded by the applicant in the Portal, the extent to which it is engaged in furnishing electric energy to persons in rural areas.

(b) An applicant claiming to be a State, the District of Columbia, a Tribal government (as defined in § 30D(g)(9)[6]), a political subdivision of any of the foregoing,[7] or an agency or instrumentality of any of the foregoing,[8] must provide the following:

(i) A private letter ruling issued by the IRS ruling on its status, if any, or

(ii) An attestation signed under penalties of perjury, by a person authorized to bind the applicant, certifying that, "*to the best of the person's knowledge and belief, that the entity is a State, the District of Columbia, a Tribal government, a political subdivision of any of the foregoing, or an agency or instrumentality of any of the foregoing, and acknowledging that this representation is not for the purpose of examination or inspection within the meaning of IRC § 7605(b).*" The attestation must be uploaded as part of the application in the Portal by the applicant. In addition to the acknowledgment described above, the attestation must include the following statement: "*Solely for purposes of the § 48E(h)credit, the applicant qualifies as a [insert the entity type as described above in this section].*"

(iii) In the case of an applicant claiming to be a Tribal government, a subdivision of a Tribal government, or an agency or instrumentality of any of the foregoing, proof that the Tribe is on the current list of Tribal entities recognized and eligible for funding and services published by the BIA, available on the BIA website.

(6) *Qualified Renewable Energy Company*. Applicants claiming to be a qualified renewable energy company (QREC), as described in § 1.48E(h)-1(h)(2)(viii), must provide each of the below requirements in a single package upload in the Portal as ASC documentation.

(a) *Demonstration of Business Purpose*. The applicant must submit relevant governing documentation dated at least two years prior to application submission containing and highlighting language which confirms the claimed business purpose of the applicant to serve low-income communities and provide pathways for the adoption of clean energy by low-income households, as required under § 1.48E(h)-1(h)(2)(viii)(A).

(b) *At least 51 percent ownership requirement*. The applicant must provide a list of all individuals with an equity interest in the entity and specify for each individual the percentage of the individual's ownership interest in the applicant entity and provide a diagram and description of the ownership structure to demonstrate that the applicant entity meets the at least 51 percent ownership requirements under § 1.48E(h)-1(h)(2)(viii)(B).

(c) *Installation, operation, or services requirement*. To demonstrate the applicant meets the requirements of § 1.48E(h)-1(h)(2)(viii)(C), the applicant must provide: (1) documentation indicating the applicant entity has been in existence and operating for at least two years; and (2) an executed (by each party) contract including the applicant, in its entirety (including any amendments, appendices, consumer disclosures, and schedules, and dated at least two years prior to the date of application to this Program), to install, operate, or provide services to a clean energy facility.

(d) *Employment and gross receipts*. The applicant must provide a summary document that demonstrates it meets the employment and gross receipts requirements under § 1.48E(h)-1(h)(2)(viii)(D). To demonstrate this, the applicant entity must provide the following documentation:

(i) A list of all current full time and full-time equivalent employees of the applicant entity;

(ii) A copy of a federal tax filing for the previous two tax years listing the applicant entity's gross receipts; and

(iii) Either a statement providing that the applicant does not have any affiliates or, if the applicant has affiliates, a summary list of each affiliate entity of the applicant, a description of how affiliation was determined, a list of all current employees of affiliates, indicating the number of full-time and full-time equivalent employees, as provided in § 1.48E(h)-1(h)(2)(viii)(D), and a list of affiliate entity gross receipts for each affiliate entity from the previous taxable year.

(7) *Qualifying entity in a partnership*. If an applicant does not itself meet the Ownership Criteria described in § 1.48E(h)-1(h)(2), but the applicant is an entity treated as a partnership for federal income tax purposes, and an entity described in § 1.48E(h)-1(h)(2)(i)(A)-(E) or (h)(2)(iii)-(vii) and section 7.07(1)-(5) of this revenue procedure owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the applicable facility owned by the applicant will be deemed to meet the Ownership Criteria. In addition to providing the documentation described in section 7.08(1)-(4) of this revenue procedure with respect to the relevant partner meeting the requirements of § 1.48E(h)-1(h)(2)(iii)-(vii) (that is, the partner which the applicant is claiming meets the Ownership Criteria), the applicant must also submit documentation to demonstrate that the requirements described in § 1.48E(h)-1(h)(2)(ii)(B) are satisfied if the applicant is claiming to meet the Ownership Criteria based on this provision.

(8) *Qualifying tax-exempt entity as partner qualifying partnership involving low-income housing credit.* An applicant must provide the applicable documentation described in section 7.08(1)-(5) of this revenue procedure with respect to the relevant partner meeting the requirements

[6] For a general discussion of Tribal governments and their subdivisions, see section 5.12 of Rev. Proc. 2024-1, 2024-1 IRB 1, and § 7871.

[7] For a general discussion of political subdivisions of States, see Rev. Rul. 77-164, 1977-1 C.B. 20, Rev. Rul. 78-276, 1978-2 C.B. 256, and Rev. Rul. 83-131, 1983-2 C.B. 184.

[8] For a general discussion of agencies and instrumentalities of governments, see Rev. Rul. 57-128, 1957-1 C.B. 311, *Rose v. Long Island Railroad Pension Plan*, 828 F.2d 910, 918 (2d Cir. 1987), *cert. denied*, 485 U.S. 936 (1988), and *Bernini v. Federal Reserve Bank of St. Louis, Eighth District*, 420 F. Supp. 2d 1021 (E.D. Mo. 2005).

of § 1.48E(h)-1(h)(2)(iii)-(vii) (that is, the partner which the applicant is claiming meets the Ownership Criteria), and the § 42 partnership agreement listing the relevant partner which the applicant is claiming meets the Ownership Criteria.

.09 *Geographic Criteria attestation*. If the applicant claims that it meets the ASC for Geographic Criteria described in § 1.48E(h)-1(h)(3) with respect to Categories 1, 3, or 4, the applicant attests that the applicable facility will be located in a Persistent Poverty County (PPC) or in a census tract that is designated as disadvantaged in the Climate and Economic Justice Screening Tool (CEJST) as defined in § 1.48E(h)-1(h)(3).[9]

SECTION 8. REVIEW AND SELECTION PROCESS

.01 *In general*. The IRS will decide whether to award an applicant an amount of Capacity Limitation with respect to a facility based on the recommendation of reviewers.

.02 *Order of application review and recommendation for allocation*.

(1) *Initial 30-day application period*. In accordance with § 1.48E(h)-1(j)(4)(ii), when the application period opens, there will be a 30-day period during which applications will initially be accepted for each facility category. All applications submitted within the first 30 days will be treated as submitted on the same date and at the same time. The initial 30-day period will begin on the opening day of the application period described in section 5.04 and end at 11:59 pm on the 30th day after the opening day of the application period. The opening day is included in calculating the 30-day period. Refer to section 8.02(2) of this revenue procedure for information regarding the randomization process for applications submitted during the first 30 days.

(2) *Randomization process for applications submitted during the 30-day period*. All applications submitted during the 30-day period will be randomized within their respective categories or Category 1 sub-reservation to determine the review order. The randomization process will determine the order of application review and consideration for an allocation of Capacity Limitation if the category or Category 1 sub-reservation is oversubscribed. The randomization process is conducted prior to application review. Regardless of an application's position in the review order, a facility will not receive an allocation of Capacity Limitation if the facility and the application with respect to that facility do not meet the requirements of the final regulations and this revenue procedure.

(3) *Applications submitted after the initial 30-day period*. Following the 30-day period, applications will continue to be accepted until the close of the application period described in section 5.04 of this revenue procedure. Applications submitted after the initial 30-day period will be held for review and consideration for an allocation of Capacity Limitation after the applications in the same category or Category 1 sub-reservation which were submitted during the initial 30-day period. Review of such applications will occur only if sufficient Capacity Limitation remains to be allocated in a given category or Category 1 sub-reservation, and in conjunction with the redistribution provisions described in section 4.05 of the revenue procedure. See section 8.03 of this revenue procedure for information regarding the processing of ASC applications submitted during and after the initial 30-day period.

(4) *Close of Program year*. The Program year will close each year no later than December 31 at 11:59 PM EST. At the end of a Program year, applications submitted but not awarded an allocation will be withdrawn.

.03 *Processing Additional Selection Criteria applications*.

(1) *In general*. As provided under § 1.48E(h)-1(h)(1) and section 4.04 of the revenue procedure, 50 percent of the Capacity Limitation in each facility category will be reserved for applicable facilities meeting the Ownership Criteria described in § 1.48E(h)-1(h)(2) and the Geographic Criteria described in § 1.48E(h)-1(h)(3)

(2) *Prioritization of Additional Selection Criteria applications submitted during the initial 30-day period*. For applications submitted during the initial 30-day period (described in section 8.02 of the revenue procedure), applications purporting to meet one or more ASC are included in the randomization process (described in section 8.02(2) of this revenue procedure) with non-ASC applications for that category or Category 1 sub-reservation. However, applications purporting to meet one or more ASC, and which are submitted during the initial 30-day period, will be prioritized for an allocation over non-ASC applications within the same category or Category 1 sub-reservation. Allocations of Capacity Limitation for facilities meeting one or more of the ASC will be made from the 50 percent ASC reservation for such facilities. If during the initial 30-day period, an ASC reservation for a category or Category 1 sub-reservation is oversubscribed with ASC applications, Capacity Limitation from the applicable category or sub-reservation may be reallocated to prioritize review and consideration of ASC applications. Applications purporting to meet two ASC qualifications (an Ownership Criteria and a Geographic Criteria), and that were submitted within the initial 30-day period, will be prioritized for review over applications purporting to have one ASC qualification through a base adder on top of the randomization result. Applications purporting to have one ASC qualification will be prioritized for review ahead of applications submitted without any ASC qualifications through a base adder on top of the randomization result. ASC qualifications may be removed during the review process if unsupported by the application, in which case the application would have the applicable ASC adder removed and the application would be reordered to the original randomization position prior to the addition of the base adder(s).

(3) *Additional Selection Criteria applications submitted after the initial 30-day period*. If after the initial 30-day period (described in section 8.02(1) of this revenue procedure) an ASC reservation for a category or Category 1 sub-reservation is undersubscribed, such ASC reservation of 50 percent is maintained. However, as described in § 1.48E(h)-1(g)(3) and section 4.05 of this revenue procedure, Capacity

[9] Maps that capture applicable census tracts are linked on the Program homepage.

Limitation may be redistributed to oversubscribed categories and sub-reservations within a Program year. ASC applications submitted after the initial 30-day period will be reviewed and considered for an allocation from the given ASC reservation until all the Capacity Limitation for that ASC reservation has been allocated or Capacity Limitation from the ASC reservation has been reallocated. If the ASC reservation is exhausted, the ASC applications submitted after the close of the initial 30-day period are not prioritized for an allocation from the overall Capacity Limitation reservation for the category or Category 1 sub-reservation. Instead, such ASC applications are combined with the general review queue for post-initial 30-day period applications in a given Category or Category 1 sub-reservation. Provided there is still capacity remaining to be allocated in the given Category or Category 1 sub-reservation, these post-initial 30-day period ASC applications are reviewed and considered for an allocation in the order in which they were received, along with the other non-ASC applications submitted after the initial 30-day period.

.04 *Cure period for application defects*.

(1) *In general*. If the application reviewer identifies a defect or is unable to confirm application details, such as missing or incorrect information or documentation, the applicant will be contacted by the application reviewer in the Portal. The reviewer will request that the applicant submit additional information or documentation to correct or complete the application through the Portal. If the review team determines the defect is not able to be cured, then the review team will recommend the application for rejection.

(2) *Timing for applicant response*. An applicant that is contacted by a reviewer to submit additional information or documentation or provide corrected information will have 12 business days (12 business day cure period) to respond and provide such requested information or documentation.

(3) *Consequences for failure to respond or provide information*. If an applicant fails to respond and provide the requested information or documentation within the 12 business day cure period, review will cease, and the application will be processed with the information previously supplied, which may result in a withdrawal or recommendation of rejection. The applicant may create and submit a new application for review if the facility remains eligible.

SECTION 9. NOTIFICATION OF ALLOCATION DECISION

.01 *In general*. The IRS will send final decision letters through the Portal to inform applicants of the outcome of the application process. For any applicant that receives an award of Capacity Limitation, the letter will state the amount of the allocated Capacity Limitation.

.02 *Allocation amount*. The Capacity Limitation allocated to an applicable facility will be determined based on the nameplate capacity of the facility as stated in the application. The Capacity Limitation allocation will be provided in DC. For facility types with a nameplate capacity measured in AC, AC will be treated as equivalent to DC for purposes of determining the amount of a Capacity Limitation allocation.

.03 *Effect of an allocation*. A Capacity Limitation allocation or a notification that an applicable facility has met the eligibility requirements under the Program at the time the facility is placed in service is not a final determination that property is eligible for an increased credit under § 48E(h). The IRS may, upon examination, determine that property does not qualify for the increased credit.

SECTION 10. PLACED IN SERVICE

.01 *In general*. To satisfy the requirements of § 1.48E(h)-1(k), for any facility that receives an allocation of Capacity Limitation, the owner of the facility must report through the Portal the date the facility was placed in service and provide documentation and make attestations as required under section 10.02 of this revenue procedure.

.02 *Documentation and attestation requirements*. To satisfy the requirements of § 1.48E(h)-1(k), the owner must provide the following through the Portal:

(1) A Permission to Operate (PTO) letter (or commissioning report for off-grid facilities) confirming the location of the facility being placed in service.

(2) A Final, Professional Engineer (PE) stamped (if required by applicable state or local law) as-built design plan, PTO letter with nameplate capacity listed, or other documentation from an unrelated party verifying as-built nameplate capacity. If a PE stamped as-built design plan is not mandated by local jurisdiction, then either a signed statement from the facility owner confirming the final facility size or an upload of a single-line diagram accurately describing the final build is required.

(3) For Category 3 Facilities, a final Benefits Sharing Statement as described in § 1.48E(h)-1(e)(6) demonstrating that the financial benefits requirements will be met based on the expected annual energy produced by the as-built facility at placed in service. The final statement should clarify differences, if any, from the draft benefits statement provided during the application process. A template benefits sharing statement is linked on the Program homepage.

(4) For Category 4 Facilities, a final Demonstration of Financial Benefits statement as defined in § 1.48E(h)-1(f)(3)(vi)) demonstrating that the financial benefits requirements will be met based on the expected annual energy produced by the as-built facility at placed in service and during the recapture period under § 48E(h)(5) and § 1.48E(h)-1(n). The final statement should clarify differences, if any, from the draft Demonstration of Financial Benefits statement provided during the application process. An example Demonstration of Financial Benefits statement is linked on the Program homepage. The taxpayer must include with the Demonstration of Financial Benefits statement documentation described under § 1.48E(h)-1(f)(3)(vi) to demonstrate the facility is enrolled in a utility tariff, program, or other arrangement used to distribute financial benefits in the form of a bill credit discount rate to Qualifying Households.

(5) An attestation confirming that a disqualification event under § 1.48E(h)-1(m)(1) through (5) has not occurred.

(6) An attestation stating that the person submitting the information and documentation at placed in service is authorized to legally bind the taxpayer that owns the applicable facility, and that, under penalties of perjury, they have examined the submission, including any accompanying documents, and that, to the best of their knowledge and belief, all of the facts con-

tained therein are true, correct, and complete.

SECTION 11. CLAIMING THE ENERGY PERCENTAGE INCREASE

.01 *In general*. After the facility is placed in service, and the owner submits the additional documentation and attestations described in § 1.48E(h)-1(k) and section 10 of this revenue procedure, the owner is notified that it (or the applicable partners or shareholders in the case of a partnership or an S corporation) may claim the energy percentage increase on Form 3468, *Investment Credit* (or successor form) or Form 3800, *General Business Credit* (or successor form), or, if eligible, make an elective payment election under § 6417, or, if eligible, make a transfer election under § 6418.

.02 *Reduction in Increased Energy Percentage*. In cases where the applicable facility's nameplate capacity is larger than the allocated capacity when placed in service (but still below the maximum net output of 5 MW AC), the 10 percentage or 20 percentage point increase will be reduced by a reduction factor which is calculated by the amount of Capacity Limitation allocated (kW) divided by the total nameplate capacity installed (kW) at the time the owner of the facility claims the energy percentage increase under § 48E(h). See § 48E(h)(1)(B).

SECTION 12. ALLOCATION TRANSFERS

.01 *In general*. Except as otherwise provided in this section, a Capacity Limitation allocation award applies only to the taxpayer who applied for and received an allocation award for the facility the taxpayer owns. If the original applicant and allocation awardee transfers to another taxpayer ownership of the applicable facility to which the allocation of Capacity Limitation was made, the parties must complete a transfer request in the Portal for the allocation to be transferred to the successor owner. Written instructions for the allocation transfer request process are publicly available at https://www.irs.gov/credits-deductions/low-income-communities-bonus-credit. This website can also be accessed using irs.gov/licBonusCredit. Allocations cannot be transferred from one facility to another facility. Additionally, applicants may only request transfers from one regarded entity to another regarded entity and may not request transfers to or from disregarded entities. The IRS intends to provide future guidance regarding unincorporated organizations that elect to be excluded from the application of subchapter K of chapter 1.

.02 *Additional Selection Criteria*. Applicants who received an allocation based on the ASC should refer to § 1.48E(h)-1(m)(5) regarding potential disqualification if the original applicant does not retain the requisite interest described in § 1.48E(h)-1(m)(5) in an entity treated as a partnership for federal income tax purposes that owns the facility.

SECTION 13. APPLICABILITY AND EFFECTIVE DATE OF THIS REVENUE PROCEDURE

The guidance in this revenue procedure is effective on January 8, 2025 and applies to Program year 2025 and subsequent years.

SECTION 14. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520) (PRA) 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. A Federal 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.

Sections 5, 7, and 10 of this revenue procedure mention reporting and recordkeeping requirements that are necessary to ensure that the facility meets the criteria for the tax credit under § 48E(h). In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), these collections of information are included within the associated regulation and have been submitted to the Office of Management and Budget under OMB Control Number 1545-2327 under PRA procedures 5 CFR 1320.11.

SECTION 15. DRAFTING INFORMATION

The principal author of this revenue procedure 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 revenue procedure, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

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26 CFR § 601.201: Rulings and determination letters.

Revenue Procedure 2025-12

SECTION 1. PURPOSE

On December 30, 2024, Revenue Procedure 2025-1 was published with an incorrect user fee for requests for tax treaty limitation of benefits determinations. I.R.B. 2025-1. This revenue procedure contains the correct user fee for requests for tax treaty limitation of benefits determinations. Rev. Proc. 2025-1 is modified.

SECTION 2. CORRECTION OF REVENUE PROCEDURE 2025-1, I.R.B. 2025-1

In **Appendix A(8)** of Rev. Proc. 2025-1, **Tax treaty limitation of benefits**, the second column incorrectly lists the user fee for requests received after February 1, 2025 as $51,900. The correct user fee for requests received after February 1, 2025 is $66,800.

SECTION 3. WHAT IS THE EFFECT OF THIS REVENUE PROCEDURE ON OTHER DOCUMENTS?

Rev. Proc. 2025-1 is modified.

SECTION 4. WHAT IS THE EFFECTIVE DATE OF THIS REVENUE PROCEDURE?

This revenue procedure is effective January 20, 2025.

Part IV

Notice of Proposed Rulemaking

Revising Consolidated Return Regulations and Controlled Group of Corporations Regulations to Reflect Statutory Changes, Modernize Language, and Enhance Clarity

REG-134420-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations that affect affiliated groups of corporations that file consolidated Federal income tax returns. These regulations would modify the consolidated return regulations to clarify that, in the case of certain transfers between members of a consolidated group, a transferee's assumption of certain liabilities will not reduce the transferor's basis in the transferee's stock received in the transfer. Final regulations modifying other consolidated return regulations are published in the Rules section of this issue of the ***Federal Register***.

DATES: Written or electronic comments as well as requests for a public hearing must be received by March 31, 2025. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG-134420-10). 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 comment submitted electronically or on paper to its public docket.

Send paper submissions to: CC:PA:01:PR (REG-134420-10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact William W. Burhop at (202) 317-5363 or Kelton P. Frye at (202) 317-5135 (not toll-free numbers); concerning the submission of comments and/or requests for a public hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by email at *publichearings@irs.gov* (preferred) or by phone at (202) 317-5306 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

Section 1502 authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe consolidated return regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to clearly reflect the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. *See* §1.1502-1(h) (defining the term "consolidated group"). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code (chapter 1) that would apply if the corporations composing the consolidated group filed separate returns. Additionally, section 7805(a) of the Code authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

This notice of proposed rulemaking contains proposed regulations under section 1502 of the Internal Revenue Code (Code) that would revise the Income Tax Regulations (26 CFR part 1) issued under section 1502 (consolidated return regulations). Terms used in the consolidated return regulations generally are defined in §1.1502-1.

I. *Section 357(c) and §1.1502-80(d)*

Section 1.1502-80 provides generally that: (i) the Code, or other law, is applicable to a consolidated group to the extent the consolidated return regulations do not exclude its application; and (ii) to the extent not excluded, other rules operate in addition to, and may be modified by, the consolidated return regulations. *See* §1.1502-80(a)(1). Section 1.1502-80(d) provides that section 357(c) of the Code does not apply to any transaction to which §1.1502-13 and other specified sections of the consolidated return regulations apply.

As discussed in the preamble to proposed regulations (REG-137519-01) published in the ***Federal Register*** (66 FR 57021, 57022) on November 14, 2001 (proposed consolidated section 357(c) regulations), because section 357(c) does not apply to certain intragroup section 351 exchanges (that is, exchanges between members of a consolidated group to which section 351 of the Code applies) under §1.1502-80(d), a concern arose that no liabilities can technically be excluded under section 357(c)(3). Therefore, in such an intragroup section 351 exchange, the transferor's basis in the stock of the transferee received in the transfer first would be reduced by liabilities assumed by the transferee, including those liabilities described in section 357(c)(3) that would not have reduced basis had section 357(c) applied. The transferor's basis in the stock of the transferee then would be reduced a second time under the principles of §1.1502-32 at the time the liability does in fact give rise to a deduction on the part of the transferee and is taken into account on the consolidated return. This result ultimately could cause the transferor to recognize an amount of gain on the sale of the stock of the transferee that does not clearly reflect income.

The Treasury Department and the IRS published the proposed consolidated section 357(c) regulations to eliminate potential duplicative stock basis reductions arising from such transactions. As discussed in the preamble to the proposed consolidated section 357(c) regulations, those proposed regulations were published to clarify that, in certain transfers described in section 351 of the Code between members of a consolidated group, a transferee's assumption of liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), will not reduce the transferor's basis in the transferee's stock received in the exchange.

II. *2023 Proposed Regulations*

On August 7, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-134420-10) in the ***Federal Register*** (88 FR 52057) under sections 52(a), 414(b), 1502, 1503, 1552, and 1563 of the Code (2023 proposed regulations). The 2023 proposed regulations primarily would revise the consolidated return regulations and the controlled group of corporations regulations (i) to eliminate obsolete or otherwise outdated provisions, (ii) to modernize the language and improve the clarity of the regulations, and (iii) to facilitate taxpayer compliance. The 2023 proposed regulations are adopted as final regulations (T.D. 10018) published in the Rules section in this issue of the ***Federal Register***.

The preamble to the 2023 proposed regulations stated that the proposed rule in the proposed consolidated section 357(c) regulations is unnecessary because §§1.1502-32 and 1.1502-80 prevent any duplicative stock basis reduction. Accordingly, the 2023 proposed regulations withdrew the proposed consolidated section 357(c) regulations.

III. *Comment Received*

A commenter stated that, in light of the withdrawal of the proposed consolidated section 357(c) regulations, it is unclear whether the transferor's basis in the transferee stock should be reduced for an assumed section 357(c)(3)(A) liability: (i) at the time of the section 351 exchange under section 358 of the Code, with no further basis reduction under §1.1502-32(b) when the assumed section 357(c)(3)(A) liability generates a deduction that is absorbed (front-end adjustment); or (ii) at the time the deduction for the assumed section 357(c)(3)(A) liability is absorbed that reduces basis under §1.1502-32(b), with no prior basis reduction under section 358 at the time of the section 351 exchange (back-end adjustment). The commenter recommended the back-end adjustment approach for various reasons, including the additional compliance costs and complexity associated with tracking and monitoring the transferee's §1.1502-32(b) basis adjustments (potentially over multiple years, and potentially across multiple groups) under the front-end adjustment approach. The commenter also expressed the view that the back-end adjustment approach is the prevailing approach currently applied by taxpayers.

Explanation of Provisions

The withdrawal of the proposed consolidated section 357(c) regulations was not intended to suggest that a front-end adjustment approach is required. To reflect the Treasury Department's and the IRS's view regarding the appropriate timing for the single basis reduction for an assumed section 357(c)(3)(A) liability, and to clarify that a back-end adjustment is appropriate, this document would repropose the proposed consolidated section 357(c) regulations in modified form.

Proposed Applicability Date

Pursuant to section 1503(a) of the Code, these proposed regulations would apply to consolidated return years for which the due date of the return (without regard to extensions) is after [date of publication of final regulations in the ***Federal Register***].

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*

These regulations update the regulations under section 1502 to clarify the timing of a single basis adjustment required by statute. Therefore, the proposed regulations would not impose additional reporting burden beyond what is otherwise required by existing statutes, regulations, and forms. The total burden associated with the proposed regulations, if finalized in their current form, would be $0.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary of the Treasury certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations would apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Therefore, the proposed regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that these proposed regulations will not have significant economic impact on a significant number of small entities.

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

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 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. The proposed regulations do not propose any rule that would 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. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "ADDRESSES" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *https://www.regulations.gov*.

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

Drafting Information

The principal authors of this document are William W. Burhop and Kelton P. Frye of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects

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 continues to read in part as follows:

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

Par. 2. Section 1.1502-80 is amended by:

1. Revising paragraph (d)(1); and
2. Adding paragraphs (d)(3) and (4).

The revision and additions read as follows:

§1.1502-80 Applicability of other provisions of law.

* * * * *

(d) * * *

(1) *In general*. Section 357(c) does not apply to any transaction to which §1.1502-13 applies if it occurs in a consolidated return year beginning on or after [date of publication of final regulations in the ***Federal Register***]. Notwithstanding the foregoing, for purposes of determining the transferor's basis in property under section 358(a) received in a transfer described in section 351, section 358(d)(2) operates to exclude liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), from the computation of the amount of liabilities assumed that is treated as money received under section 358(d)(1), if the transfer occurs in a consolidated return year beginning after [date of publication of final regulations in the ***Federal Register***]. This paragraph (d) does not apply to a transaction if the transferor or transferee becomes a nonmember as part of the same plan or arrangement. The transferor (or transferee) is treated as becoming a nonmember once it is no longer a member of a consolidated group that includes the transferee (or transferor). For purposes of this paragraph (d), any reference to a transferor or transferee includes, as the context may require, a reference to a successor or predecessor.

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(3) *Examples.* The principles of paragraph (d)(1) of this section are illustrated by the following examples.

(i) *Example 1*—(A) *Facts*. P, S, and T are members of a consolidated group. P owns all the stock of S and T with bases of $30 and $20, respectively. S has a $30 basis in its assets and $40 of liabilities. S merges into T in a transaction described in section 368(a)(1)(A) (and in section 368(a)(1)(D)).

(B) *Analysis*. Section 357(c) does not apply to the merger. P's basis in T's stock increases to $50 ($30 + $20), and T succeeds to S's $30 basis in the assets transferred subject to the $40 liability. Similarly, if S instead transferred its assets and liabilities to a newly formed subsidiary in a transaction to which section 351 applies, section 357(c) does not apply, and S's basis in the subsidiary's stock is a $10 excess loss account.

(ii) *Example 2*—(A) *Facts*. P owns all the stock of S1. S1 has assets with a total fair market value equal to $100 and an aggregate basis of $30. S1 has $40 of liabilities, $5 of which are described in section 357(c)(3)(A), but not section 357(c)(3)(B), and $35 of which are not described in section 357(c)(3)(A). S1 transfers its assets to a newly formed subsidiary, S2, in exchange for stock of S2 and S2's assumption of the liabilities of $40 in a transaction to which section 351 applies. P, S1, and S2 are members of a consolidated group.

(B) *Analysis*. Section 357(c) does not apply to cause S1 to recognize gain in connection with the transfer. For purposes of determining S1's basis in the S2 stock it received in the exchange, section 358(d)(2) operates to exclude $5 of the liabilities from the computation of the amount of liabilities assumed that are treated as money received under section 358(d)(1). S1's basis in the S2 stock received in the exchange is a $5 excess loss account (reflecting its $30 basis in the assets transferred reduced by

$35, the amount of liabilities assumed that are not described in section 357(c)(3)(A)).

(4) *Applicability dates*. Paragraphs (d)(1) and (3) of this section apply to consolidated return years for which the due date of the return (without regard to extensions) is after [date of publication of final regulations in the ***Federal Register***]. For rules that apply to earlier taxable years, *see* §1.1502-80(d) as contained in 26 CFR part 1, revised April 1, 2024.

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Douglas W. O'Donnell,
Deputy Commissioner

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Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 23, 2024.

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We Welcome Comments About the Internal Revenue Bulletin

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