INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–40
September 30, 2024

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE, INCOME TAX

Notice 2024-66, page 682.

Notice 2024-66 provides relief from the addition to tax under § 6655 for underpayment of estimated income tax by a corporation to the extent the amount of any underpayment is attributable to the corporation's corporate alternative minimum tax (CAMT) liability under § 55. The notice also incorporates the relief provided in Notice 2024-33, 2024-18 I.R.B. 959, and Notice 2024-47, 2024-27 I.R.B. 1, and obsoletes those notices.

ESTATE TAX

REG-119683-22, page 716.

The proposed regulations would modify regulations applicable to qualified domestic trusts (QDOTs) under section 2056A of the Internal Revenue Code (Code). The proposed regulations would remove references to temporary regulations that have been finalized and replace references to obsolete official IRS titles, offices, office addresses, and an outdated publication with current references. The proposed regulations would also update the procedure for filing required security instruments and correct outdated information related to when the value of assets passing to a QDOT is finally determined for Federal estate tax purposes. The proposed regulations primarily would affect the estates of decedents passing property to or for the benefit of a noncitizen spouse in a QDOT pursuant to section 2056A of the Code.

ESTATE TAX, INCOME TAX

T.D. 9991, page 646.

Generally, the initial basis of property in the hands of a person acquiring the property from a decedent is the fair market of the property at the date of the decedent's death. These final regulations provide guidance regarding when this initial basis may not exceed the final value of the property as determined for purposes of the estate tax imposed on the decedent's estate, or if not finally determined, the value reported on a statement furnished to the person acquiring the property (the consistent basis requirement). In addition, these final regulations provide guidance on the basis reporting requirements that facilitate taxpayers' compliance with the consistent basis requirement. These reporting requirements are applicable to executors and others required to file an estate tax return, as well as to trustees who distribute property they acquired from a decedent.

INCOME TAX

REG-106851-21, page 684.

This document contains proposed regulations regarding the exclusion from gross income of certain Tribal general welfare benefits. The proposed regulations address the requirements that would apply to determine whether the benefits that an Indian Tribal government program provides qualify as Tribal general welfare benefits. These proposed regulations would affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally-recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants. This document also requests comments on certain provisions and provides a notice of a public hearing on the proposed regulations that will be in addition to Tribal consultation on the proposed regulations.

REG-116787-23, page 709.

These proposed regulations would 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 (PTC). The proposed coverage month amendment generally would provide that, in computing a PTC, a month may be a coverage month for

Finding Lists begin on page ii.

an individual if the amount of the premium paid, including by advance payments of the PTC (APTC), for the month for the individual's coverage is sufficient to avoid termination of the individual's coverage for that month. The proposed regulations also would amend the rule in the existing regulations relating to the amount of enrollment premiums a taxpayer considers in computing the taxpayer's monthly PTC if a portion of the monthly enrollment premium for a coverage month is unpaid. In addition, the proposed regulations would clarify a rule in the existing regulations relating to when an individual is considered to be ineligible for coverage under a state's Basic Health Program (BHP).

Rev. Rul. 2024-20, page 646.

Fringe benefits aircraft valuation formula. For purposes of section 1.61-21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the second half of 2024 are set forth.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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Part I

Section 61. Gross Income Defined

26 CFR 1.61-21: Taxation of Fringe Benefits

Rev. Rul. 2024-20

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61-21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61-21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61-21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation (DOT) and are reviewed semi-annually.

The following chart sets forth the terminal charge and SIFL mileage rates:

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
7/1/24 - 12/31/24	$54.30	Up to 500 miles = $.2971 per mile 501-1500 miles = $.2265 per mile Over 1500 miles = $.2178 per mile

DRAFTING INFORMATION

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

T.D. 9991

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

Consistent Basis Reporting Between Estate and Person Acquiring Property from Decedent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations that provide guidance on the statutory requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes. In addition, the final regulations provide guidance on the statutory requirements that executors and other persons provide basis information to the IRS and to the recipients of certain property. The final regulations regarding the statutory consistent basis requirement affect recipients of property acquired from a decedent if the inclusion of the value of the property in the decedent's gross estate increases the Federal estate tax liability. The final regulations regarding the statutory basis reporting requirements affect executors and other persons required to file an estate tax return based on the value of the decedent's gross estate and the amount of decedent's lifetime adjusted taxable gifts, as well as trustees making in-kind distributions of property initially acquired from a decedent that was subject to the statutory basis reporting requirements.

DATES: *Effective date*: These regulations are effective on September 17, 2024.

Applicability dates: For dates of applicability, *see* §§1.1014-1(d), 1.1014-10(f), 1.6035-1(j), and 1.6662-9(c).

FOR FURTHER INFORMATION CONTACT: Concerning section 1014(f), Donna Douglas at 202-317-6859; concerning section 6035, Karen Wozniak at 202-317-6844 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 1014(f) and 6035 of the Internal Revenue Code (Code) relating to the statutory consistent basis requirement and basis reporting requirements, and amendments to the Procedure and Administration Regulations (26 CFR part 301) under sections 6721 and 6722 of the Code relating to the applicable penalties for failure to comply with the statutory basis reporting requirements.

1. *General Statutory Background and Enactment of the 2015 Act*

Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (2015 Act), Public Law 114-41, 129 Stat. 443, 454 (July 31, 2015), enacted sections 1014(f), 6035, 6662(b)(8), 6662(k), 6724(d)(1)(D), and 6724(d)(2)(II) of the Code to require consistency between a recipient's basis in certain property acquired from a decedent and the value of the property as finally determined for Federal estate tax purposes. Section 1014(f) sets forth the consistent basis requirement, while the procedural rules in sections 6035, 6662, and 6724 set forth the applicable reporting requirements, penalties, and definitions. On March 23, 2018, section 104 of Division U of the Consolidated Appropriations Act, 2018, Public Law 115-141, 132 Stat. 348, 1170, made a technical correction to the definition of the term *inconsistent estate basis* under section 6662(k) of the Code, retroactive to the original date of enactment of the 2015 Act. The technical correction modified the definition to take into account, for purposes of the accuracy-related penalty imposed under section 6662 of the Code, that the basis of property determined under section 1014(f) is only the initial basis of such property. Thus, nothing in section 1014(f) prevents post-death basis adjustments pursuant to other sections of the Code.

2. *Existing Regulatory and Administrative Guidance under Sections 1014(f) & 6035*

On March 4, 2016, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (81 FR 11486) a notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations (REG-127923-15). The proposed regulations would provide guidance on the consistent basis requirement under section 1014(f) applicable to recipients of certain property from a decedent and the reporting requirements under section 6035 applicable to executors and other persons required to file an estate tax return. Section 1.6035-2 of the proposed regulations (proposed §1.6035-2) cross-references temporary regulations under §1.6035-2T (TD 9757), published in the **Federal Register** (81 FR 11431) on the same day, which provide transitional relief on the due date for filing the information return required by section 6035 (Information Return) and furnishing the statement(s) required by section 6035 (Statement(s)). Specifically, the temporary regulations extended the due date for filing and furnishing the required Information Return and Statement(s) to March 31, 2016.[1]

On March 23, 2016, in response to requests from the public for an additional extension of time for filing and furnishing the required Information Return and Statement(s), the Treasury Department and the IRS issued Notice 2016-27, 2016-15 IRB 576, extending the due date for both to June 30, 2016. On December 2, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 86953) final regulations (TD 9797) confirming the extension until June 30, 2016, to file and furnish the required Information Return and Statement(s).

3. *Public Hearing and Comments*

On June 27, 2016, the Treasury Department and the IRS held a public hearing on the proposed regulations. In addition to the comments received at the hearing, the Treasury Department and the IRS received approximately thirty written comments on the proposed regulations. The written comments are available for public inspection at *https://www.regulations.gov* or upon request.

After consideration of all of the comments, the Treasury Department and the IRS are adopting the proposed regulations with certain revisions. These revisions substantially reduce the burden on both the IRS and taxpayers and increase administrability of the proposed rules. The revisions include (1) removing the zero basis rule for unreported property; (2) adopting a suggested interpretation of the term *acquiring* for purposes of section 6035(a)(1) and thereby modifying the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date; (3) eliminating the subsequent transfer reporting requirement for all beneficiaries other than trustees; and (4) excepting additional types of property interests from the consistent basis requirements and the reporting requirements under section 6035. In addition, a number of requested technical changes have been made to the proposed regulations. Besides the changes made in response to comments, non-substantive revisions have been made to clarify the language and improve the organization of the proposed regulations. The public comments and revisions are discussed in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

1. *Section 1014(f) – Consistent Basis Requirement*

A. *Proposed §1.1014-10(a)(1): Consistent basis requirement – In general*.

Section 1014(f)(1) provides that the basis of certain property acquired from a decedent cannot exceed that property's final value for purposes of the Federal estate tax imposed on the estate of the decedent, or, if the final value has not been determined, the value reported on a required Statement. This statutory rule is referred to as the *consistent basis requirement*. Section 1.1014-10 of the proposed regulations (proposed §1.1014-10) includes proposed rules that would implement the consistent basis requirement.

Proposed §1.1014-10(a)(1) provides that a taxpayer's initial basis in certain property acquired from a decedent may not exceed the property's final value for estate tax purposes within the meaning of proposed §1.1014-10(c). Proposed §1.1014-10(a)(1) additionally provides that the consistent basis requirement applies whenever the taxpayer reports a taxable event to the IRS with respect to

[1] Prior extensions of the due dates to file and furnish the required Information Return and Statement(s) were set forth in Notice 2015-57, 2015-36 IRB 24, and Notice 2016-19, 2016-09 IRB 362.

the property and continues to apply until the entire property is sold, exchanged, or otherwise disposed of in one or more transactions that result in the recognition of gain or loss for Federal income tax purposes, regardless of whether the owner on the date of the sale, exchange, or disposition is the same taxpayer who acquired the property from the decedent or as a result of the decedent's death.

The final regulations retain the rule in proposed §1.1014-10(a)(1) incorporating the consistent basis requirement as it applies if a final value has been determined. However, proposed §1.1014-10(a)(1) is revised in the final regulations to incorporate the consistent basis requirement as it applies if no final value has been determined (previously addressed in proposed §1.1014-10(c)(2)). Proposed §1.1014-10(a)(1) additionally is revised in the final regulations to explain that the property subject to the consistent basis requirement is referred to as *consistent basis property*, which now is described in §1.1014-10(c)(1) of the final regulations.

A commenter inquired whether the judicial doctrine of the duty of consistency continues to apply if the consistent basis requirement applies to property. For a discussion of the judicial doctrine of the duty of consistency, see *Van Alen v. Commissioner*, T.C. Memo, 2013-235 (Oct. 2013) and *Janis v. Commissioner*, 461 F.3d 1080 (9th Cir. 2006). The final regulations do not limit the arguments that may be applicable under case law, including the judicial doctrine of the duty of consistency in appropriate cases.

With regard to the rule describing the duration of the consistent basis requirement in proposed §1.1014-10(a)(1), several comments were received. Commenters asserted, and the Treasury Department and the IRS agree, that the consistent basis requirement should not continue to apply to property that is sold at a price that is equal to its basis because this sale is a recognition event even though no gain or loss is recognized. Other commenters asserted, and the Treasury Department and the IRS agree, that the consistent basis requirement should not continue to apply to property once that property is included in the gross estate of another decedent. Finally, commenters questioned whether substituted property obtained in an exchange under section 1031 of the Code (that is, a like-kind exchange) is subject to the consistent basis requirement.

Accordingly, the rule in proposed §1.1014-10(a)(1) describing the duration of the consistent basis requirement, which is moved to §1.1014-10(a)(3) of the final regulations, is revised to clarify that the consistent basis requirement applies until the entire property is sold, exchanged, or otherwise disposed of in a recognition transaction for income tax purposes (whether or not any amount of gain or loss is actually recognized) or the property becomes includible in another decedent's gross estate. Under this rule, because a like-kind exchange is not a recognition event for income tax purposes, substituted property obtained in such a transaction is subject to the consistent basis requirement until the owner's basis in every portion of the substituted property no longer is related, in whole or in part, to the final value of the property that was acquired from the decedent.

B. *Proposed §1.1014-10(a)(2): Subsequent basis adjustments*.

Proposed §1.1014-10(a)(2) provides that the final value of consistent basis property is the taxpayer's initial basis in the property. Proposed §1.1014-10(a)(2) further confirms that, in computing the taxpayer's basis in property acquired from the decedent or as a result of the decedent's death, the taxpayer's initial basis in that property may be adjusted due to the operation of other Code provisions that govern basis without violating the consistent basis requirement. Proposed §1.1014-10(a)(2) also gives examples of such adjustments, such as gain recognized by the decedent's estate or trust upon distribution of the property, post-death capital improvements and depreciation, and post-death adjustments to the basis of an interest in a partnership or an S corporation (as defined in section 1361(a)(1) of the Code). Proposed §1.1014-10(a)(2) states that the existence of recourse or non-recourse debt secured by property at the time of the decedent's death does not affect the property's basis, whether the gross value of the property and the outstanding debt are reported separately on the estate tax return or the net value of the property is reported. Therefore, the proposed regulations state that post-death payments on recourse or non-recourse debt secured by property do not result in an adjustment to the property's basis.

Section 1.1014-10(a)(2) of the final regulations maintains the rule identifying the initial basis of consistent basis property if a final value has been determined, as well as the rule and examples regarding acceptable adjustments to initial basis. However, proposed §1.1014-10(a)(2) is revised in the final regulations by identifying the initial basis of consistent basis property during the period before the final value of such property is determined and by moving the rule regarding recourse and non-recourse debt secured by property to §1.1014-10(b)(3)(i) of the final regulations.

The rule regarding recourse and non-recourse debt secured by property is addressed separately in the final regulations in order to address more specifically, in response to comments, the effect of recourse and non-recourse debt on the initial basis of consistent basis property. A commenter requested that the final regulations clarify that, if the decedent's estate includes property subject to non-recourse debt and the executor reports the value of the property on the decedent's estate tax return as the value of the property less the debt (the net value or equity of redemption value), then the final value of the property is nevertheless the gross value of the property undiminished by the debt. The Treasury Department and the IRS adopt this suggestion in §1.1014-10(b)(3)(i) of the final regulations, which provides that the final value or, if applicable, the reported value, of property subject to recourse or non-recourse debt is determined based on the gross value of that property undiminished by debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the property or separately reports the gross value of the property and claims an estate tax deduction for the outstanding debt.

Another commenter requested that the final regulations clarify whether the existence of recourse or non-recourse debt on partnership property reduces the final value of a partnership interest includible in the decedent's gross estate. The existence of recourse or non-recourse debt on

partnership property relates to the value of the partnership and the gross value of a decedent's partnership interest, determinations of which are outside the scope of these final regulations. Accordingly, this request is not adopted. However, the Treasury Department and the IRS note that, with respect to a deceased partner having a loan secured by a partnership interest, the same rule in §1.1014-10(b)(3)(i) of the final regulations will apply so that the final value of the partnership interest is the gross value of the partnership interest undiminished by the debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the partnership interest or separately reports the gross value of the partnership interest and claims an estate tax deduction for the outstanding debt.

C. *Proposed §1.1014-10(b)(1): Property subject to consistency requirement – In general*.

Section 1014(f)(2) provides that the consistent basis requirement applies only to property whose inclusion in the decedent's gross estate increased the estate tax liability. Based on this rule, proposed §1.1014-10(b)(1) provides that the property subject to the consistent basis requirement is any property includible in the decedent's gross estate under section 2031 of the Code, any property subject to tax under section 2106 of the Code, and any other property the basis of which is determined in whole or in part by reference to the basis of such property (for example, as the result of a like-kind exchange or an involuntary conversion) that generates an estate tax liability in excess of allowable credits, except for the credit for prepayment of estate tax.

This rule is maintained in §1.1014-10(c)(1)(i) of the final regulations with certain modifications in response to comments. First, the final regulations, in §1.1014-10(c)(1)(i)(A), include the preliminary criterion for the applicability of the consistent basis requirement in section 1014(f)(1) that only property to which section 1014(a) applies is consistent basis property. Second, the Treasury Department and the IRS have corrected the final regulations to reflect that section 2103 of the Code, not section 2106, defines the gross estate for purposes of the estate tax on the estate of a nonresident non-citizen. The correction is found in the definition of the term *included property* in §1.1014-10(d)(4) of the final regulations, which term is referenced in §1.1014-10(c)(1)(i)(B) of the final regulations. Finally, the Treasury Department and the IRS have corrected the final regulations in §§1.1014-10(c)(1)(i)(C) and 1.1014-10(d)(5) to remove the reference to the prepayment of estate tax as a credit, because an estate tax prepayment is not an identified credit but instead is a payment of estate tax.

Commenters inquired whether the allowable credits referenced in proposed §1.1014-10(b)(1) include credits provided under treaties. One commenter inquired whether, in order to treat the prorated unified credit under section 2102(b)(3) of the Code as an allowable credit, the executor is required to attach a Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, to the nonresident non-citizen decedent's Form 706-NA, *United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States*. In response to these comments, §1.1014-10(d)(5) of the final regulations defines the term *allowable credits* to include both credits against the estate tax allowable by any section of the Code and credits against the estate tax allowable by any treaty obligation of the United States, provided that the estate qualifies for the credit and complies with all applicable rules for claiming the credit, including filing all necessary forms or statements.

With regard to the applicability date of the consistent basis requirement to property, commenters requested clarification on whether the filing after July 31, 2015, of an estate tax return supplementing an estate tax return filed on or before that date would subject any of the assets in the decedent's gross estate to the consistent basis requirement. Other commenters requested clarification on whether the filing on or before July 31, 2015, of an estate tax return that was due after July 31, 2015, would subject any of the assets in the decedent's gross estate to the consistent basis requirement. In response to these comments, §1.1014-10(c)(1)(ii) of the final regulations clarifies that neither the supplementing of an estate tax return after July 31, 2015, nor a due date of an estate tax return after July 31, 2015, causes property to be subject to the consistent basis requirement if an estate tax return was filed on or before July 31, 2015.

D. *Proposed §1.1014-10(b)(2): Exclusions*.

Proposed §1.1014-10(b)(2) provides that property that qualifies for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A of the Code does not generate a tax liability under chapter 11 of the Code (chapter 11) and therefore is excluded from the property subject to the consistent basis requirement. Proposed §1.1014-10(b)(2) further provides that tangible personal property for which an appraisal is not required under §20.2031-6(b) of the Estate Tax Regulations (26 CFR part 20) is deemed not to generate a tax liability under chapter 11 and therefore also is excluded from the property subject to the consistent basis requirement.

With regard to the exclusion for property qualifying for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A, multiple commenters sought clarification on whether property qualifying for only a partial marital or charitable deduction is subject to the consistent basis requirement. In the case of property qualifying for only a partial marital or charitable deduction, the property increases the estate tax liability to the extent that it does not qualify for a marital or charitable deduction and, therefore, the property is subject to the consistent basis requirement. In such a case, applying the consistent basis requirement only to the partial interest not qualifying for a deduction is impractical and incompatible with the uniform basis rules under §1.1014-4 of the Income Tax Regulations. Accordingly, §1.1014-10(c)(2)(xi) of the final regulations identifies only wholly deductible property, under any of sections 2055, 2056, 2056A, 2106(a)(2) and (3), as property not subject to the consistent basis requirement. Partially deductible property (property that qualifies for only a partial marital or charitable deduction) is outside the scope of this rule and, therefore, is consistent basis property subject to the

consistent basis requirement. Some examples of property qualifying for only a partial marital or charitable deduction, and, therefore, not excepted from the consistent basis requirement, are: (1) a charitable remainder trust, a charitable lead trust, or a pooled income fund; (2) a trust subject only to a partial QTIP election under section 2056(b)(7); and (3) property divided between the decedent's surviving spouse and a charity if the sum of the deductions for the two interests given to those recipients is less than the value of the property included in the value of the gross estate.

With regard to the exclusion for tangible personal property, §1.1014-10(c)(2)(ix) of the final regulations retains as an exception to the consistent basis requirement tangible personal property for which an appraisal is not required under §20.2031-6(b). However, in response to a comment, these items are described in the final regulations as household and personal effects, rather than as tangible personal property, to conform more closely with §20.2031-6(b).

Multiple commenters advocated for additional exclusions from the consistent basis requirement either because certain property is not subject to the consistent basis requirement under the plain language of the statute or because certain property, in the commenters' views, should be excepted from the consistent basis requirement by the exercise of regulatory authority. In response, §1.1014-10(c)(2) of the final regulations provides a list of property that is identified as property excepted from or not subject to the consistent basis requirement. A particular property may be described in more than one item on that list.

One commenter suggested that the final regulations confirm that the consistent basis requirement applies only to property to which section 1014(a)(1) through (3) applies, as only such property has a basis that is adjusted to the property's Federal estate tax value as a result of the decedent's death. Specifically, the commenter requested that the final regulations provide that, if the basis of property is not determined under section 1014(a)(1) through (3), then the property is not subject to the consistent basis requirement. Under such a provision, the commenter concluded that the following property would be excluded from the consistent basis requirement: (1) property subject to a conservation easement resulting from the section 2031(c) election (the subject of section 1014(a)(4)); (2) income in respect of a decedent (IRD) (the subject of section 1014(c)); (3) DISC stock (the subject of section 1014(d)); (4) pre-death gifts of appreciated property (the subject of section 1014(e)); (5) stock in a passive foreign investment company (PFIC) by reason of section 1291(e)(1); and (6) annuities subject to section 72 (the subject of section 1014(b)(9)(A)). Section 1014(f)(1) applies the consistent basis requirement to all property to which section 1014(a) applies. The Treasury Department and the IRS agree that section 1014(b)(9)(A), (c), and (e) describes property not subject to section 1014(a), and therefore property that does not acquire a new basis based in any way on the Federal estate tax value of that property. Stock of a PFIC subject to section 1296(i) also is property not subject to section 1014(a), but only if the basis of such stock is its adjusted basis in the hands of the decedent immediately before the decedent's death. Accordingly, §1.1014-10(c)(2)(x) of the final regulations clarifies that such interests are not subject to the consistent basis requirement.

However, the adjustments to the basis of property to be made pursuant to section 1014(a)(4) and (d) and otherwise under section 1291(e)(1), do not make section 1014(a), and therefore section 1014(f), inapplicable to the property described in those sections. In each of these cases, the property's Federal estate tax value is a factor used in determining the property's basis under these sections. Thus, the consistent basis requirement applies to the property described in these sections, even though the basis of the property may differ from the Federal estate tax value of the property.

Several commenters requested confirmation that certain property is not subject to the consistent basis requirement because the value of that property is not included in the decedent's gross estate for Federal estate tax purposes. For instance, a commenter requested confirmation that the consistent basis requirement does not apply to property the basis of which is adjusted in a manner similar to section 1014(a) on the occurrence of a taxable termination that occurs on a person's death pursuant to section 2654(a)(2). Such property generally becomes subject to the generation-skipping transfer tax on the death of a trust beneficiary and, as long as the property is not includible in a person's gross estate for Federal estate tax purposes, it is not property to which section 1014(a) applies. Other commenters requested confirmation that the consistent basis requirement does not apply to a surviving spouse's interest in community property to which section 1014(b)(6) applies because, although this property is deemed to have been acquired from the decedent and thus is subject to section 1014(a), such property is not includible in the decedent's gross estate for estate tax purposes. The Treasury Department and the IRS agree with the commenters that, in both cases, the property is not subject to the consistent basis requirement because it is not property includible in the gross estate. Accordingly, §1.1014-10(c)(2)(xii) and (xiii) of the final regulations clarify that such interests are not subject to the consistent basis requirement.

Finally, in addition, §1.1014-10(c)(2) of the final regulations excepts certain types of property whose basis generally does not differ from the property's face value, such as United States dollars and certain equivalents.

E. *Proposed §1.1014-10(b)(3): Application*.

Proposed §1.1014-10(b)(3) provides that, if an estate tax liability is payable after the application of all available credits (other than a credit for a prepayment of estate tax), the consistent basis requirement applies to the entire gross estate (other than property excluded by proposed §1.1014-10(b)(2)) because all such property contributes to the estate tax liability and therefore is treated as generating an estate tax liability. Proposed §1.1014-10(b)(3) clarifies that if, after the application of all such available credits, no tax under chapter 11 is payable, the entire gross estate is excluded from the application of the consistency requirement. The final regulations in §1.1014-10(c)(1)(ii) adopt the substance of this proposed rule with minor language changes.

F. *Proposed §1.1014-10(c)(1): Final value – Finality of estate tax value*.

Proposed §1.1014-10(c)(1) provides that the final value of property reported on an estate tax return is its value as finally determined for purposes of the estate tax. Proposed §1.1014-10(c)(1) further provides that the finally determined value is (i) the value reported on a return filed with the IRS pursuant to section 6018 of the Code once the period of limitations for assessment of the estate tax has expired without that value having been timely adjusted or contested by the IRS, (ii) if the preceding rule in (i) does not apply, the value determined or specified by the IRS once the periods of limitations for assessment and for claim for refund or credit of the estate tax have expired without that value having been timely contested, (iii) if the preceding rules in (i) and (ii) do not apply, the value determined in an agreement, once that agreement is final and binding on all parties, or (iv) if the preceding rules in (i), (ii), or (iii) do not apply, the value determined by a court, once the court's determination is final.

The rules in proposed §1.1014-10(c)(1) are adopted in redesignated §1.1014-10(b)(1) of the final regulations, with certain clarifications and other changes. First, §1.1014-10(b)(1)(ii) of the final regulations omits the reference to the period of limitations on credit or refund, which makes the rules defining the "final value" of consistent basis property in the final regulations more consistent with the rules defining a final determination for gift tax purposes. This is appropriate because both regulatory definitions are based on similar statutory language. Second, the final regulations in §1.1014-10(d)(1) add a definition of the term *contested* to clarify that an executor cannot contest the IRS's determination of value with only a "protective" statement generally contesting the IRS's determination of value. The challenge must be specific to a particular item of property, rather than a general objection that would provide no meaningful information respecting the value of the property at issue. Thus, the challenge must put at issue the value of property by providing to the IRS a written statement that identifies the specific property, states that the executor does not accept as correct the value determined or specified by the IRS, and provides the executor's claimed value for the property as determined in accordance with the requirements of section 2031, the regulations thereunder, and other applicable guidance. In cases in which the value of property is contested, the final value will be determined either by agreement between the executor and the IRS, as described in §1.1014-10(b)(1)(iii) of the final regulations, or by litigation, as described in §1.1014-10(b)(1)(iv) of the final regulations.

G. *Proposed §1.1014-10(c)(2): No finality of estate tax value*.

Proposed §1.1014-10(c)(2) of the proposed regulations provides that, prior to the determination of the final value of property subject to the consistent basis requirement, the recipient of that property may not claim an initial basis in excess of the value reported on the required Statement. Proposed §1.1014-10(c)(2) further provides that, if the final value of the property subsequently is determined (under proposed §1.1014-10(c)(1)) and that value differs from the value reported on the required Statement, then the taxpayer may not rely on the required Statement initially furnished for the value of the property and the taxpayer may have a deficiency and underpayment resulting from this difference. The Treasury Department and the IRS received several comments on these proposed rules.

One commenter opined that the proposed regulations unfairly hold a beneficiary responsible for not using the final value to determine initial basis if the beneficiary sells property before its final value is determined. The commenter asserted that, in any event, if the final value of property is determined after its sale, any accuracy-related penalty imposed under section 6662 should be waived if the beneficiary acted in good faith. Similarly, commenters requested confirmation that no income tax deficiency would result if the final value of the property is determined after the expiration of the period of limitations on assessment applicable to the beneficiary's income tax return.

If a beneficiary uses the value reported on the required Statement to calculate gain or loss on the sale of property, the beneficiary is using the value reported on the estate tax return. This may or may not be the final value of the consistent basis property as determined under section 1014(f)(3). Nevertheless, section 1014(f)(1)(A) provides specifically that, in the case of property the final value of which has been determined, the beneficiary's initial basis is limited to that final value. It would be inconsistent with the language of the statute to fail to provide that an income tax deficiency and underpayment may result if a value exceeding the final value is used to determine initial basis.

Accordingly, the final regulations, in redesignated §1.1014-10(b)(2), maintain the rules in proposed §1.1014-10(c)(2), and add several clarifying provisions. Section 1.1014-10(b)(2)(i) of the final regulations clarifies that the reported value is the value reported on the Statement required under §1.6035-1 or, if supplemented, on the most recent supplement to that Statement. That section further clarifies that the value from any Statement that reports either a value from an estate tax return filed after the expiration of the period of limitations on assessment applicable to that return, or a value for property not reported on the estate tax return, is not a reported value. In effect, before a final value is determined, the value reported on the estate tax return controls. This rule recognizes that section 1014(f)(3) requires an assessment process to determine the final value of property. The IRS cannot assess tax on property reported only on the required Information Return or required Statement(s) because these constitute only information returns and payee statements as defined in section 6724(d)(1)(D) and (d)(2)(II), respectively. Section 1.1014-10(b)(2)(ii) of the final regulations clarifies that an income tax deficiency can result if the final value of property is determined before the expiration of the period of limitations on assessment for an income tax return that reports a taxable event with regard to the property. Section 1.1014-10(b)(2)(ii) of the final regulations also includes a reference to section 6664 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

H. *Proposed §1.1014-10(c)(3): After-discovered or omitted property*.

Proposed §1.1014-10(c)(3) provides basis rules for property that is discovered after the filing of the estate tax return or otherwise is omitted from the estate tax return. Proposed §1.1014-10(c)(3)(i)(A) provides that, if the executor reports the after-discovered or omitted (unreported) property on an estate tax return filed before the expiration of the period of limitations on assessment of the estate tax, the final value of the property is determined under proposed §1.1014-10(c)(1) or (2). Alternatively, proposed §1.1014-10(c)(3)(i)(B) provides that, if the unreported property is not reported before the period of limitations on assessment expires, the final value of that property is zero. Finally, to address situations in which no estate tax return was filed, proposed §1.1014-10(c)(3)(ii) provides that the final value of all property includible in the gross estate subject to the consistent basis requirement is zero until the final value is determined under proposed §1.1014-10(c)(1) or (2). Because the application of proposed §1.1014-10(c)(3)(i)(B) or §1.1014-10(c)(3)(ii) results in the beneficiary having an initial basis of zero in unreported property, these proposed provisions are collectively referred to as the *zero basis rule*.

Comments received on the zero basis rule generally fall into two categories: those relating to the statutory interpretation of section 1014(f) and the authority to impose the zero basis rule; and those relating to the practical effects of the zero basis rule. With respect to the former, many commenters contended that section 1014(f), by its terms, applies only to property that is reported on an estate tax return. Therefore, the commenters concluded that the basis of unreported property, as determined under section 1014(a), is not limited by the consistent basis requirement in section 1014(f). Commenters further contended that section 1014(f)(4) limits the regulatory authority of the Treasury Department and the IRS to providing exceptions to the application of the consistent basis requirement, and that expanding the consistent basis requirement to address unreported property is beyond the scope of this regulatory authority. Some commenters contended that the Code does not support a regulatory interpretation that denies at least a carryover basis for an inherited asset.

Commenters commenting on the practical effects of the zero basis rule contended that the rule is onerous, unduly harsh, and unfair. Commenters noted that a beneficiary receiving unreported property in many cases will not be the executor or other person having the responsibility to report the property and the beneficiary may have no ability to compel the executor to report the property on the return. Yet, under the zero basis rule, the beneficiary receiving unreported property will have an increased tax burden due to the denial of basis, whether determined under section 1014(a) (fair market value on the decedent's date of death) or, in the alternative, a carry-over basis of the decedent's adjusted basis in the property. Commenters noted that unreported property is more likely to arise by inadvertent omission from the estate tax return or as a result of being undiscovered, rather than willful omission. Therefore, except in the case of willful omission by a beneficiary who is the executor or other person responsible to report the property, commenters contended that the zero basis rule is unduly harsh and unfair because it creates a 100 percent taxable gain on the sale of the property by the beneficiary.

The Treasury Department and the IRS do not agree that providing a zero basis rule for unreported property is beyond its regulatory authority for implementing the congressional mandate of section 1014(f). *See* section 7805(a) and, more specifically, section 1014(f)(3)(B) (referencing the ability of the IRS to specify the value of property not reported on a return required by section 6018). However, the Treasury Department and the IRS recognize that such a rule primarily impacts the recipients of unreported property, who may have had no knowledge of or involvement in the failure to report the property for Federal estate tax purposes, but, nevertheless, have an increased tax burden under the rule.

The Treasury Department and the IRS additionally recognize that, under applicable State law, an executor is personally accountable to discharge its fiduciary duty to seek out and collect every asset and to acquire possession of the property of the decedent. See 31 Am. Jur. 2d *Executors and Administrators* § 369 (2018); *Eger v. Eger*, 314 N.E.2d 394 (Ohio App. 1974); *Matter of Deutsch*, 114 A.D.2d 413, 493 N.Y.S 884 (2d Dep't 1985). Further, the Treasury Department and the IRS recognize that, in the absence of a zero basis rule for unreported property, existing Federal tax enforcement mechanisms under subtitle F of the Code, including criminal liability, serve to deter willful nonreporting of property on the estate tax return. *See*, *e.g.*, section 6651(a)(3) of the Code for a potential addition to tax; sections 6662(a), (g), and (h), 6663, 6721, and 6722 of the Code for potential accuracy-related, fraud, and other penalties; section 6501(c)(1) and (2), and (e)(2) of the Code for potential exceptions to the general three-year period of limitations on assessment; and sections 7203, 7206, and 7207 of the Code for potential criminal liability and penalties.

In view of these considerations, the final regulations do not include the zero basis rule. Instead, §1.1014-10(c)(1)(i) of the final regulations clarifies that the consistent basis requirement applies only to *included property*, a term that is defined in §1.1014-10(d)(4) of the final regulations to refer to property, the value of which is included in the value of the decedent's gross estate, as defined in section 2031 or 2103. Section 1.1014-10(d)(4) of the final regulations explains that this refers to property whose value is reported on an estate tax return or otherwise is included in the total value of the gross estate so that a final value is or will be determined for that property under chapter 11. Consequently, the basis of property acquired or passed from a decedent that is not reported on an estate tax return and not otherwise included in the gross estate generally is determined under section 1014(a), without regard to the rules of section 1014(f). The rule identifying property subject to the consistent basis requirement in §1.1014-10(c)(1)(i) of the final regulations, together with the definition of the term *included property* in §1.1014-10(d)(4) of the final regulations, is sufficient to clarify the scope of the consistent basis requirement, and therefore these final regulations do not include a specific rule on the basis of unreported property.

I. *Proposed §1.1014-10(d): Executor*.

Proposed §1.1014-10(d) provides that, for purposes of proposed §1.1014-10, the term *executor* has the same meaning as in section 2203 of the Code and includes any other person required under section 6018(b) to file a return. In response to comments or as needed for clarity, proposed §1.1014-10(d) is expanded in the final regulations to define several additional terms for purposes of §1.1014-10, including the terms *contested*, *estate tax liability*, *included property*, *allowable credits*, and *United States dollars*.

J. *Proposed §1.1014-10(e): Examples*.

Proposed §1.1014-10(e) provides four examples to illustrate the application of proposed §1.1014-10. In general, the examples illustrate rules applicable to the final value of property, subsequent basis adjustments, and reliance on a required Statement. In particular, one example illustrates the application of the zero basis rule on the final value of unreported property.

Section 1.1014-10(e) is revised in the final regulations by reordering the examples and adding headings to provide clarity. Because the zero basis rule from proposed §1.1014-10(c)(3) is not included in the final regulations, §1.1014-10(e) is further revised in the final regulations by removing the example illustrating the zero basis rule. Finally, §1.1014-10(e) is revised in the final regulations by adding examples to illustrate rules regarding the duration of the consistent basis requirement, the meaning of included property that is subject to the consistent basis requirement, and the treatment of partially deductible property that is subject to the consistent basis requirement.

K. *Applicability date.*

Proposed §1.1014-10(f) provides that, upon publication of the Treasury Decision adopting these rules as final in the Federal Register, §1.1014-10(f) of the final regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose estate tax return is filed after July 31, 2015. The final regulations revise the applicability date of §1.1014-10(f) of the proposed regulation consistent with section 7805(b)(1). Accordingly, §1.1014-10(f) of the final regulations does not reference the July 31, 2015, effective date of section 1014(f), and provides instead that §1.1014-10 of the final regulations applies to property described in §1.1014-10(c)(1) of the final regulations that is acquired from a decedent or by reason of the death of a decedent if the decedent's estate tax return is filed after the date of publication of these final regulations in the Federal Register.

L. *Comments requesting new process for beneficiary to challenge value*.

Several commenters expressed concern that beneficiaries have no input in the determination of final value even if they believe the estate tax return reports an incorrect or understated value. These commenters posited that binding a beneficiary's initial basis to the final value may deprive the beneficiary of due process. Consequently, they requested a procedure through which a beneficiary may challenge the determination of final value. Some commenters suggested that the procedure allow the beneficiary an opportunity to provide evidence of a different date-of-death value at the time of examination by the IRS of the beneficiary's income tax return (on which a taxable event with respect to the property is reported).

The Treasury Department and the IRS considered and briefly responded to a request to create a new process for challenging the value reported by the executor in part 16 of the Summary of Comments on Notice 2015-57 and Explanation of Provisions section of the preamble of the proposed regulations. In the proposed regulations, the Treasury Department and the IRS declined to create a new Federal process for challenging the value reported by the executor. Administrability and other concerns weigh against creating a new Federal process for challenging the value reported by the executor. Specifically, this would leave the IRS in the same position it held prior to the enactment of section 1014(f). During that time, the IRS was forced to litigate valuation issues with a beneficiary, often years after relevant market information had ceased to be available, and/or after having previously litigated the same valuation issue with the estate. In addition, regarding the suggestion to create a procedure to allow the beneficiary to provide evidence of value at the time of examination by the IRS of the beneficiary's income tax return, such a procedure would be contrary to the statutory rule in section 1014(f)(1) limiting the basis of property within its scope to the property's final value for Federal estate tax purposes or, otherwise, to the value reported on a required Statement.

In response to the commenters' concerns, however, the Treasury Department and the IRS are considering issuing guidance in the future that grants a beneficiary of property subject to the consistent basis requirement the opportunity to provide certain credible evidence of value. Out of administrability concerns, the Treasury Department and the IRS further anticipate such an opportunity might be available only during some limited period of time and only if the credible evidence of value indicates that the reported value represents a substantial understatement of value.

2. *Section 6035 – Required Information Return(s) and Statement(s)*

Section 1.6035-1 of the proposed regulations (proposed §1.6035-1) includes proposed rules that would address the statutory basis reporting requirements under section 6035 applicable to executors and other persons required to file an estate tax return. As noted in part 3 of the Background section of this preamble, the Treasury Department and the IRS made amendments to the proposed rules that substantially reduce burden and increase administrability for both taxpayers and the IRS. In particular, the final regulations (1) adopt a suggested interpretation of the term *acquiring* in section 6035(a)(1), thereby modifying the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date, (2) eliminate the subsequent transfer reporting requirement for all beneficiaries other than trustees, and (3) except additional types of property interests from the reporting requirements under section 6035. These and other amendments to proposed §1.6035-1 are laid out in a reorganized final regulation.

A. *Overview of reporting requirements*.

The final regulations under section 6035 add an overview paragraph in §1.6035-1(a) to clarify the relationship between the reporting requirements under section 6035 and the consistent basis requirement applicable to certain beneficiaries under section 1014(f).

B. *Applicability of section 6035 reporting requirements*.

In order to provide greater clarity, the final regulations set forth in separate paragraphs the provisions governing the applicability of the section 6035 reporting requirements and the rule for the identification of the persons included as executors who are subject to them.

i. *General rules regarding applicability of section 6035 reporting requirements*.

Section 1.6035-1(b)(1) sets forth the rule in section 6035(a)(1) and proposed §1.6035-1(a)(2) that only executors of an estate who are required to file an estate tax return (referred to as a *required estate tax return*) under section 6018 are subject to the reporting requirements under section 6035. In addition, §1.6035-1(b)(1) sets forth the rule that the reporting requirements apply only in the case of a required estate tax return that is filed after July 31, 2015, and sets forth the rule in proposed §1.6035-1(a)(2) that the reporting requirements do not apply if no estate tax return is required to be filed under section 6018 even if the executor files an estate tax return for other purposes, including without limitation to make a generation-skipping transfer tax exemption allocation or election, a portability election, or a protective filing to avoid a penalty if an asset value is later determined to cause a return to be required or otherwise.

Section 1.6035-1(b)(1) of the final regulations also clarifies that whether an estate tax return is a required estate tax return depends on the date of death value of property includible in the decedent's gross estate, the amount of adjusted taxable gifts, and the applicable filing threshold under section 6018(a), so that an election made under section 2032 or 2032A of the Code to determine the value of property includible in the gross estate in accordance with either of those respective provisions is not relevant to the determination of whether a return is a required estate tax return. *See* section 6018(a) and §20.6018-1(a).

Some commenters inquired whether the reporting requirements apply in the event estate tax returns are filed before August 1, 2015, if either the due date for the return is after July 31, 2015, or the executor files a supplement to the return after July 31, 2015. Section 1.6035-1(b)(1) of the final regulations provides that the reporting requirements do not apply if a required estate tax return is filed on or before July 31, 2015, even if the due date of the return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015.

ii. *Executors subject to the section 6035 reporting requirements*.

Section 1.6035-1(b)(2) of the final regulations defines the term *executor* consistent with the definition of that term in proposed §1.6035-1(g)(1), but includes further explanation in response to comments. One commenter noted the possibility that more than one person may be considered an executor for purposes of section 2203(a) and §20.2203-1 and asked for clarification of the filing requirements in that situation. The commenter posited a scenario in which an executor who is appointed, qualified, and acting on behalf of the estate (an appointed executor) files an estate tax return, but is unable to make a complete return as to a trust the value of which is includible in the gross estate of the decedent. In that case, the trustee of that trust, upon notice from the IRS, is required to file a return reporting the trust property and the value thereof. *See* section 6018(b) and §20.6018-2. In response, the final regulations provide that each person required to file a return is subject to the section 6035 reporting requirements, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that person. The commenter also suggested clarifying the application of the section 6035 reporting requirements if no executor is appointed but multiple persons are in actual or constructive possession of property of the decedent. Under the final regulations, each person in actual or constructive possession of property of the decedent is an executor and is subject to the section 6035 reporting requirements, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that executor. Finally, the commenter suggested clarifying the application of the reporting requirements in the case of successor or co-executors. While all co-executors are responsible for the reporting, it is sufficient for only one of the co-executors to file the Information Return and to furnish the Statement(s).

Commenters questioned who is required to comply with the reporting requirements if a qualified revocable trust makes a section 645 election and there is a probate estate. Under section 645, the trustee of a qualified revocable trust and an appointed executor (if any) may elect to treat the trust as part of the estate for income tax purposes. The section 645 election relates only to the income tax liability of a qualified revocable trust. Therefore, the section 645 election, by itself, does not affect whether the trustee of a qualified revocable trust is an executor within the meaning of §1.6035-1(b)(2). The expanded definition of the term executor in §1.6035-1(b)(2) of the final regulations adequately clarifies who is subject to the reporting requirements.

C. *Required Information Return and Statements*.

Section 1.6035-1(c) of the final regulations incorporates modifications to the rules applicable to an executor's duty to file the required Information Return (defined in §1.6035-1(c)(1) of the final regulations) and furnish each required Statement (defined in §1.6035-1(c)(2) of the final regulations) and the due dates for the satisfaction of those duties. The modifications reflect the adoption of comments relating to an executor's duty to furnish Statements to beneficiaries who have not acquired property before the due date (or earlier filing date) of the estate tax return.

i. *Furnishing Statements to beneficiaries reporting property the beneficiaries have not yet acquired*.

Section 6035(a)(1) requires the executor to furnish Statements to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes. Section 1.6035-1(c)(2) of the final regulations defines *Statement* consistent with proposed §1.6035-1(g)(3) and requires an executor to furnish a Statement to each beneficiary who acquires certain property. Section 1.6035-1(c)(2) of the final regulations clarifies that the value the executor reports on that Statement is the value of the property as reported on the estate tax return required to be filed with the IRS.

Proposed §1.6035-1(d)(1), relying on the language of section 6035(a)(3)(A), requires that Statements be provided to all beneficiaries on or before the earlier of the date that is 30 days after the due date of the estate tax return or the date that is 30 days after the date the estate tax return is filed with the IRS. If, by this due date, the executor has not determined what property will be used to satisfy the interest of each beneficiary, proposed §1.6035-1(c)(3) requires executors to report on the Statement for each beneficiary all of the property that the executor could use to satisfy that beneficiary's interest. Proposed §1.6035-1(c)(3) further provides that, once the exact distribution has been determined, the executor may, but is not required to, file and furnish a supplemental Information Return and Statement.

The Treasury Department and the IRS received numerous comments objecting to this proposed rule. Commenters noted, and the Treasury Department and the IRS agree, that proposed §1.6035-1(c)(3) would result in duplicate reporting because a single item of property (or interest in the property) would be reported on the Statement of several beneficiaries, even though some of these beneficiaries will never receive an interest or a partial interest in that property. According to commenters, this duplicate reporting may confuse beneficiaries by leading them to expect to receive all of the property reported on the Statements furnished to them. In addition, commenters have contended that this duplicate reporting is burdensome and may violate a decedent's or beneficiary's right to privacy, possibly resulting in conflicts and litigation among beneficiaries with competing interests in the estate.

Commenters offered various suggestions for revising the rule for property not acquired before the due date of the required reporting under section 6035. One commenter suggested that, in lieu of the rule requiring an executor to identify specific property the beneficiary may receive from the estate, the final regulations should permit executors to furnish Statements indicating that a beneficiary is to receive either (1) a certain percentage of the estate's property or (2) property valued at a certain dollar amount. Under this suggested alternative, the executor then would be required to file a supplemental Information Return and furnish a supplemental Statement within 30 days after the executor distributes the property to the beneficiary.

Most commenters requested that the IRS extend the time for furnishing Statements to beneficiaries to allow executors more time to distribute property or to determine which property will go to which beneficiary. One commenter suggested that the proper interpretation of the language in section 6035(a)(1) requiring an executor to furnish a Statement "to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes" is that it does not include beneficiaries until they have received an interest in particular property. The commenter supported this recommendation by pointing out that the meaning of the word "acquiring" in the Code generally means already received. The commenter identified sixty-four other sections of the Code in which the word "acquiring" appears and noted that, in only two of those sections, does "acquiring" refer to an event that has not yet occurred. The commenter also pointed to the description of earlier legislative proposals using identical language in which the descriptions refer to the beneficiary "receiving" the property or the "recipients" of an interest. The commenter reasoned that section 6035(a) requires the reporting of the value (as reported on the estate tax return) to the beneficiary acquiring that property, which assumes that the property has already been identified by having been received by the beneficiary. In addition, the commenter suggested, in effect, that this interpretation of the statutory language would not violate the statute's prohibition of any delay in reporting to a recipient beyond the determination of that value because reporting triggered by the beneficiary's receipt of the property would still provide the required valuation notice to the recipient as soon as the recipient would have reason to use that information. The commenter also noted that section 6035(b) authorizes the Secretary to prescribe regulations as necessary to carry out section 6035, and stated the commenter's belief that this authority is sufficient to allow the creation of a due date for Statements based on the date property is acquired by a beneficiary.

The commenter suggested two alternatives for the due date for furnishing Statements reporting the value of property that has not been acquired or received by the beneficiary by the due date of the Information Return: 30 days after distribution of the property to the beneficiary or January 31 of the year following the year of distribution of the property to the beneficiary. The commenter acknowledged that the first alternative appears to be consistent with the 30-day concepts found in section 6035(a)(3) (due on or before 30 days after the estate tax return due date or 30 days after the estate tax return is filed, if filed before the due date, and, in the case of an adjustment, 30 days after the adjustment is made), but the potential of multiple due dates during a single year would be burdensome on both taxpayers and the IRS. The commenter suggested that a due date of January 31 of the year following distribution would minimize those burdens while nevertheless ensuring that every beneficiary acquiring property from the decedent would have the information necessary for filing a timely income tax return reporting a sale or other relevant event regarding this property.

One commenter requested that, if the final regulations create a due date for furnishing Statements that is based on the date property is acquired by a beneficiary, then executors nevertheless have the option of furnishing all required Statements with the Information Return. Under this suggestion, if an executor determines

that it would be less burdensome, an executor would have the option to furnish a Statement to a beneficiary even if the beneficiary has not yet acquired the property.

The Treasury Department and the IRS are sympathetic to the various concerns raised by the commenters. Many estates subject to the section 6035 reporting requirements are complex and will require a period of time well beyond the estate tax return filing due date to determine the appropriate distributions of property to beneficiaries. In light of these concerns, the final regulations adopt a suggested interpretation of the term *acquiring* in section 6035(a)(1) that modifies, and reduces the burden of, the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date (or earlier filing date). With regard to property the beneficiaries acquire after the estate tax return due date, the Treasury Department and the IRS agree with the commenters that a due date for furnishing Statements to such beneficiaries that is after the acquisition of property would have several benefits. It would eliminate the potential confusion and lack of privacy that could result from giving each beneficiary a Statement showing all of the property that could be used to satisfy their respective bequests. It also would be consistent with the understanding of the Treasury Department and the IRS of the intent of section 6035 to provide accurate, timely, and useful information to beneficiaries and the IRS. After consideration of the comments, the Treasury Department and the IRS conclude that it is appropriate to interpret the term *acquiring* consistent with its most common meaning and consistent with the discretionary authority granted in section 6035(b) to provide a due date, which is after the acquisition of property, for furnishing Statements to beneficiaries who acquire property after the due date (or earlier filing date) of the decedent's estate tax return.

With regard to what the due date for Statements with regard to this property should be, the Treasury Department and the IRS conclude that a due date of January 31 of the year following acquisition by the beneficiary of this property is the most administrable and least burdensome alternative. This alternative is the most administrable and least burdensome because a January 31 due date would allow an executor to file the supplemental Information Return on an annual basis with copies of all Statements furnished to beneficiaries acquiring property in any given year, rather than having to file multiple supplemental Information Returns each year on a Statement-by-Statement basis as each Statement is furnished to a beneficiary within 30 days of acquisition.

Accordingly, §1.6035-1(c)(3) of the final regulations provides that the due date for furnishing a Statement to a beneficiary who acquired property on or before the due date or earlier filing of the estate tax return is 30 days after the due date or earlier filing of the estate tax return. The due date for furnishing a Statement to a beneficiary who acquires property at a later date is January 31 of the calendar year following the year of acquisition. Section 1.6035-1(c)(4) of the final regulations provides that a beneficiary acquires property when title vests in the beneficiary or when the beneficiary otherwise has sufficient control over or connection with the property that the beneficiary is able to take action related to the property for which basis is relevant for Federal income tax purposes. Depending upon the particular property and how it was titled at the decedent's death, this could occur at the moment of death, or upon distribution by the executor or a trustee.

The Treasury Department and the IRS further agree that providing executors the option of furnishing all Statements within 30 days of filing the estate tax return, regardless of whether all assets by then have been acquired by the beneficiaries, may reduce the burden associated with these reporting requirements and is reasonable if an executor has cause to believe that a beneficiary will acquire certain property. However, in the event that a different beneficiary acquires that property, requiring supplemental reporting ensures that beneficiaries receive the information they need to satisfy the consistent basis requirement of section 1014(f) and otherwise. Accordingly, §1.6035-1(c)(5) of the final regulations provides an option to furnish Statement(s) prior to the acquisition of property by a beneficiary. Under this rule, an executor may satisfy the requirement to furnish a Statement to a beneficiary acquiring property from the decedent or by reason of the death of the decedent by furnishing the Statement prior to the beneficiary's acquisition of the property, but only if the executor has reason to believe that the beneficiary in fact will acquire the property. The Statement must identify the property the beneficiary is expected to acquire as well as the value of that property and other information prescribed by the Statement and the instructions. A Statement described in this paragraph also must include information with respect to property that has been acquired by that beneficiary as required under §1.6035-1(c)(2) of the final regulations. Also, under the rule in §1.6035-1(c)(5) executors are required to update the beneficiary information on a supplemental Information Return and Statement if, after satisfying the requirements for this optional reporting, the property is acquired by a different beneficiary.

ii. *Explanation of provisions regarding the required Information Return and Statement(s)*.

In light of the due date set forth in the final regulations for the furnishing of Statements with regard to property acquired by a beneficiary after the due date or earlier filing of the estate tax return, §1.6035-1(c) of the final regulations makes coordinating changes in the description of the Information Return and the due dates of that return and of any required supplements to the Information Return.

In particular, §1.6035-1(c)(1) of the final regulations defines *Information Return* consistent with proposed §1.6035-1(g)(2), with one exception, and requires an executor to file the Information Return by the due date set forth in §1.6035-1(c)(3) of the final regulations. The one change is that the required attachments to the Information Return include only a copy of each Statement reporting the value of property acquired by a beneficiary on or before the due date or earlier filing of the Federal estate tax return, and a copy of each Statement (if any) reporting the value of property that has not by then been acquired by a beneficiary as described in §1.6035-1(c)(5) of the final regulations (the option to furnish Statement(s) prior to the acquisition of property by a beneficiary). The Information

Return must be timely filed even if there are no Statements (as described in the preceding sentence) required to be attached to that return.

As discussed in part 2.C.i. of this Summary of Comments and Explanation of Revisions, a Statement reporting the value of property acquired by a beneficiary subsequent to the due date or earlier filing date of the estate tax return must be furnished to the beneficiary on or before January 31 of the calendar year following the date of that acquisition. Under §1.6035-1(c)(3)(ii) of the final regulations, a copy of each Statement due by that January 31, along with a copy of each Statement (if any) provided to beneficiaries in advance of their receipt of property as permitted under §1.6035-1(c)(5) of the final regulations, must be attached to a supplemental Information Return filed with the IRS on or before that same January 31. Section 1.6035-1(c)(3)(iii) of the final regulations confirms the transition rule in proposed §1.6035-1(d)(2), with an updated reference to §1.6035-2 of the final regulations. Finally, §1.6035-1(c)(6) of the final regulations includes an example illustrating the application of §1.6035-1(c) of the final regulations.

Several commenters requested that a six-month extension of time (distinct from the automatic six-month extension of time for filing the estate tax return) be permitted for filing and furnishing the Information Return and Statements in order to allow the executor sufficient time to accurately determine which assets will be used to satisfy the interests of the various beneficiaries. The due date set forth in the final regulations for furnishing Statements to beneficiaries with regard to property they acquire after the estate tax return due date adequately addresses the concern identified by the commenters. Therefore, this suggestion is not adopted.

D. *Duty to supplement*.

i. *Duty to supplement and changes requiring supplemental reporting*.

Section 1.6035-1(d)(1) of the final regulations sets forth the rules in proposed §1.6035-1(e)(1) that impose a supplemental reporting obligation (both to the IRS and to the beneficiary) on an executor if a change to the information required to be reported on the Information Return or Statement (or supplement to either) causes the information as reported to be incorrect or incomplete. Several examples of adjustments requiring supplemental reporting are identified in proposed §1.6035-1(e)(2), and several comments were received with regard to these examples. In response to these comments, some of the examples listed in §1.6035-1(d)(2) of the final regulations differ from those proposed, and the final regulations clarify some of the other examples of adjustments.

Section 1.6035-1(d)(2)(i) of the final regulations sets forth the rule in proposed §1.6035-1(e)(2) imposing a duty to supplement upon the executor's receipt, discovery, or acquisition of information that changes the beneficiary to whom the property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise). However, the rule is clarified in the final regulations to provide more detail in response to comments. Commenters asked how an executor is to comply with the reporting requirements under section 6035 if all of the required beneficiary information is not available to the executor, for instance, if the beneficiary cannot be located or the beneficiary is a trust not as yet established. The final regulations describe the requirements in these circumstances and include the requirement to supplement the required reporting to update the beneficiary information when it becomes available to an executor. *See* §1.6035-1(d) and (g) of the final regulations. Accordingly, §1.6035-1(d)(2)(i) of the final regulations includes, as a change requiring supplemental reporting, the discovery of any information that corrects or completes other beneficiary information originally reported.

In response to comments, §1.6035-1(d)(2)(ii) of the final regulations clarifies the rule in proposed §1.6035-1(e)(2) providing that a change in the value of property pursuant to an examination or litigation is a change requiring supplemental reporting. One commenter asked for clarification as to whether supplemental reporting is required if, during examination or litigation, a settlement with the IRS increases the estate tax liability but the increase is not related to a particular property. Another commenter requested confirmation that only an adjustment in value that represents the final value for Federal estate tax purposes gives rise to a duty to supplement. With respect to the first comment, the Treasury Department and the IRS observe that a settlement of estate tax liability typically is related to an adjustment to the value of particular, identified property includible in the gross estate, a claimed deduction or credit, gift tax paid within three years before death, adjusted taxable gifts, or gift tax paid and/or payable. If a settlement does not change the value of particular, identified property, the settlement does not impact the final value of the estate's property and is not a change requiring supplemental reporting with respect to that specific property. With respect to the second comment, an adjustment representing the final value for estate tax purposes undoubtedly gives rise to the statutory duty to supplement. In addition, an adjustment to value on a supplemental estate tax return becomes the reported value for purposes of section 6035(a)(1) and §1.1014-10(b)(2) of the final regulations. Therefore, reporting a different value on a supplemental estate tax return also comes within the scope of an executor's duty to supplement. In response to these comments, §1.6035-1(d)(2)(ii) of the final regulations clarifies that both a final determination of value of property for Federal estate tax purposes that differs from the value identified on a Statement or supplement to a Statement and an executor's reporting of a change in value on a supplemental estate tax return give rise to a duty to supplement.

Commenters objected to the rule in proposed §1.6035-1(e)(2) providing that the discovery of unreported property is a change requiring supplemental reporting; they suggested that this is an impermissible broadening of the estate tax filing requirement. In response, the final regulations instead provide that it is only the supplementing of an estate tax return, to report the value of previously unreported property, that triggers a duty to supplement the reporting under section 6035, and not the mere discovery of unreported property. Consistent with the definition of *included property* in §§1.1014-10(d)(4) and 1.6035-1(e)(1) of the final regulations, §1.6035-1(d)(2)(iii) of the final regulations sets forth the rule that prop-

erty that is included in a decedent's gross estate, either by the filing of an estate tax return, a supplemental estate tax return, or pursuant to an examination by the IRS or otherwise, will give rise to a duty to supplement if the fair market value of that property was not previously reported on the estate tax return or is changed.

The rule in proposed §1.6035-1(e)(2) relating to a change in the property to be acquired by a beneficiary is updated in the final regulations to conform with the reporting requirements in the final regulations for property not acquired by a beneficiary before the due date or earlier filing date of the estate tax return. Section 1.6035-1(d)(2)(iv) of the final regulations provides that a change requiring supplemental reporting includes an executor's disposition of property in a transaction in which the basis of new property received by the estate is determined in whole or in part by reference to the final value of property acquired from the decedent or as a result of the death of the decedent (for example, as the result of a like-kind exchange or involuntary conversion). However, §1.6035-1(d)(2)(iv) of the final regulations also imposes a duty to supplement if an executor furnishes a Statement to a beneficiary prior to the beneficiary's acquisition of property pursuant to the optional reporting afforded under §1.6035-1(c)(5) of the final regulations and the beneficiary ultimately acquires property different than that identified on that Statement.

ii. *Changes not requiring supplemental reporting*.

Section 1.6035-1(d)(3)(i) of the final regulations adopts the rule in proposed §1.6035-1(e)(3)(i)(A) excluding from the duty to supplement changes to correct an inconsequential error or omission. However, the rule in proposed §1.6035-1(e)(3)(i)(B) excluding from the duty to supplement a change in the distribution of property from that previously reported is omitted from the final regulations because it relates only to the proposed reporting requirements for property not acquired by a beneficiary before the estate tax return due date. The reporting requirements for such property have been modified in the final regulations.

Section §1.6035-1(d)(3)(ii) of the final regulations provides an exception to the duty to supplement for a change in value as the result of an event described in section 2032A(c)(1) that triggers an additional estate tax liability with regard to property for which a special use election was made, including a beneficiary's election to increase the beneficiary's basis in that property under section 1016(c) in response to that event. Although such an election by a beneficiary does result in a change in value under the rule in §1.1014-10(b)(3)(ii), the qualified heir is in a better position than the executor to know this information, so no supplemental reporting is required of the executor. A commenter requested an example illustrating the adjustment to basis if there is a disposition of property subject to section 2032A under section 2032A(c)(1). Because an example would serve the purpose of illustrating the workings of section 1016(c), rather than the reporting requirements under section 6035, the Treasury Department and the IRS decline to include such an example in these regulations under section 6035.

Section 1.6035-1(d)(3)(iii) of the final regulations adopts the suggestion of a commenter by excepting from the duty to supplement any post-death or other adjustment to the basis of property made pursuant to sections of the Code other than section 1014(f). The executor generally is required to provide only supplemental Statements that show a change in the identification, value, or recipient of property as reported on the estate tax return. Therefore, section 6035 does not require the reporting of adjustments in basis attributable to the operation of Code sections other than section 1014(f). That commenter also suggested that the final regulations provide a uniform method for reporting post-death adjustments to the beneficiary if the executor chooses to do so. The Treasury Department and the IRS understand that an executor may choose to furnish a beneficiary information regarding changes to basis that occur pursuant to Code sections other than section 1014(f). If the executor does so, and if the executor chooses to use the Statement to provide that information, that information must be shown separately from the information required to be reported on the beneficiary's Statement.

Finally, §1.6035-1(d)(3)(iv) of the final regulations provides an exception to the duty to supplement for any other change that is identified as requiring no supplemental reporting under this section in guidance published in the future in the **Federal Register** or in the Internal Revenue Bulletin.

iii. *Due date of supplemental reporting*.

The rules in proposed §1.6035-1(e)(4)(i) relating to the due date for supplemental reporting are updated in the final regulations to align with the modified reporting requirements in the final regulations. Section 1.6035-1(d)(4) of the final regulations provides that supplemental reporting is due on or before 30 days after the date on which information becomes available to the executor from which the executor can conclude that a change to the earlier reporting is required to be supplemented in accordance with these final regulations. Section 1.6035-1(d)(4) of the final regulations clarifies that, for changes occurring as a result of supplementing the estate tax return, the date on which that information becomes available to the executor is the filing date of the supplement to that return and, for changes occurring as a result of a determination of final value, that date is the date a value becomes the final value under §1.1014-10(b)(1) of the final regulations. In the case of property not acquired by a beneficiary before the due date or earlier filing date of the estate tax return, §1.6035-1(d)(4) of the final regulations provides that, for property for which a Statement has not been provided to the beneficiary pursuant to the option to furnish Statements prior to the acquisition of property by a beneficiary in §1.6035-1(c)(5) of the final regulations, the due date of any required supplemental reporting may be delayed until the due date for supplemental reporting for subsequently-acquired property in §1.6035-1(c)(3)(ii) of the final regulations.

iv. *Duration of duty to supplement*.

Commenters inquired whether the executor's duty to file supplemental Information Returns and furnish supplemental Statements is limited in time. In response, §1.6035-1(d)(5) of the final regulations is

added to provide, in effect, that the duty to supplement is limited to changes that occur on or before the later of a beneficiary's acquisition of the property or the determination of the final value of the property under §1.1014-10(b)(1) of the final regulations.

v. *Illustration of duty to supplement*.

Section 1.6035-1(d)(6) was added to the final regulations to provide examples to illustrate the application of the rules regarding the duty to supplement as provided in §1.6035-1(d) of the final regulations.

E. *Property for which reporting is required*.

Proposed §1.6035-1(b)(1) provides in part that the property to which the section 6035 reporting requirements apply is all property reported or required to be reported on an estate tax return required under section 6018. The reporting requirements also apply to any other property the basis of which is determined in whole or in part by reference to the property described in the preceding sentence (for example, as the result of a like-kind exchange or an involuntary conversion).

As discussed in part 1.H of this Summary of Comments and Explanation of Revisions, the final regulations do not include the proposed zero basis rule for unreported property to which numerous commenters objected. Therefore, the final regulations narrow the scope of property for which reporting is required as compared to the rule in proposed §1.6035-1(b)(1) that would have subjected all property reported or required to be reported on an estate tax return under section 6018. Section 1.6035-1(e)(1) of the final regulations provides that only property whose value is included in the value of a decedent's gross estate for Federal estate tax purposes (and any other property the basis of which is determined, in whole or in part, by reference to the basis of such included property) is subject to the section 6035 reporting requirements. Section 1.6035-1(e)(1) of the final regulations defines the term *included property* consistently with the definition of that term in §1.1014-10(d)(4) of the final regulations to mean property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Section 1.6035-1(e)(1) of the final regulations further clarifies that included property does not include property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate as finally determined for Federal estate tax purposes.

Some commenters suggested that property subject to reporting should be limited to property to which the consistent basis requirement of section 1014(f) applies. While both sections 6035 and 1014(f) apply with respect to property includible in a decedent's gross estate only if an executor is required to file an estate tax return under section 6018, section 1014(f)(2) limits the application of the consistent basis requirement to property whose inclusion in the gross estate increases the estate tax liability for the estate. Section 6035 includes no similar limitation and, therefore, applies to a broader universe of property than section 1014(f), and it applies whether or not any estate tax must be paid. Therefore, this comment is not adopted.

Another commenter sought clarification as to whether property for which a marital or charitable deduction is claimed is property for which reporting is required. Property that qualifies, in whole or in part, for a marital or charitable deduction for which a deduction is claimed is *included property* as that term is defined in §1.6035-1(e)(1) of the final regulations. Accordingly, as §1.6035-1(e)(1) of the final regulations also clarifies, such property is subject to reporting. Consequently, the executor is required to file an Information Return and to furnish Statements if the value of the estate is sufficient to require the filing of an estate tax return, even if no estate tax is due as a result of a charitable and/or marital deduction.

Some commenters had questions about the application of the reporting requirements to community property. Proposed §1.6035-1(b)(1) provides that the reporting requirements are limited to only the decedent's one-half interest in community property. Commenters asked for confirmation that the reporting requirements do not apply to the surviving spouse's one-half interest in community property that is subject to section 1014(b)(6). Under section 1014(b)(6), the spouse's interest also is deemed to have been acquired from the decedent and thus is subject to the basis adjustment under section 1014(a). However, section 1014(a) and section 6035 are different. The spouse's interest is not includible in the decedent's gross estate and thus is not required to be reported on the estate tax return. Accordingly, §1.6035-1(e)(1) of the final regulations sets forth the rule that the reporting requirements do not apply to the surviving spouse's interest in community property.

Some commenters asked whether there is a reporting requirement if the executor makes a non pro rata division and distribution of community property authorized by applicable State law. *See*, for example, West's Ann. Cal. Prob. Code sections 100(b) and 101(b). Under applicable State law, an executor may distribute the surviving spouse's interest in community property (property belonging to the surviving spouse, in which the decedent has no interest includible under section 2033) to a beneficiary other than the surviving spouse to satisfy a bequest. In lieu of the surviving spouse's interest in the community property, the executor may distribute to the surviving spouse all or any part of decedent's interest in other property includible in the gross estate. The executor's distribution does not convert property included in the gross estate into property not included in the estate and, therefore, does not eliminate the applicability of the reporting requirements with regard to the property distributed to the surviving spouse. Accordingly, §1.6035-1(e)(1) of the final regulations identifies, as property subject to reporting, property included in the decedent's gross estate that is distributed to a decedent's surviving spouse in lieu of the surviving spouse's interest in community property pursuant to State law.

Section 1.6035-1(e)(2) of the final regulations adds two examples to illustrate property subject to reporting under section 6035.

F. *Excepted property requiring only limited reporting*.

The proposed regulations under §1.6035-1(b)(1) list four types of property proposed to be excepted from the report-

ing requirements: (i) cash (other than a coin collection or other bills or coins with numismatic value); (ii) income in respect of a decedent (as defined in section 691); (iii) tangible personal property for which an appraisal is not required under § 20.2031-6(b); and (iv) property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized.

Many commenters suggested additions or modifications to this list of exceptions. In response, the list in proposed §1.6035-1(b)(1) is expanded in redesignated §1.6035-1(f)(2) of the final regulations. A particular property included in the decedent's gross estate may qualify under more than one of these exceptions. In addition, §1.6035-1(f)(1) of the final regulations explains the reporting requirements applicable to property described in §1.6035-1(f)(2) of the final regulations, referred to as *excepted property*, and §1.6035-1(f)(4) of the final regulations provides examples of excepted property and illustrates the reporting requirements applicable to this property. A discussion of the comments and responses to the comments follows.

i. *Limited reporting of excepted property*.

Some commenters noted that it is unclear whether an executor is subject to any reporting requirements under section 6035 if all distributions from the estate are of property excepted from the reporting requirements by proposed §1.6035-1(b)(1). For example, commenters questioned whether an executor is subject to any reporting requirements under section 6035 if the executor has liquidated (or will liquidate) the estate so that all distributions will be made in cash. In response, §1.6035-1(f)(1) of the final regulations clarifies that included property is subject to more limited reporting if the property is *excepted property* (as identified in §1.6035-1(f)(2)(i) through (xiv) of the final regulations). Specifically, the requirement to file an Information Return with the IRS pursuant to §1.6035-1(c)(1) of the final regulations remains the same even if all property is excepted property. However, in the case of excepted property, an executor is required only to disclose on the Information Return that some or all of the property included in the decedent's gross estate is excepted from the full reporting requirements pursuant to §1.6035-1(f)(2) of the final regulations; an executor is not required to identify the excepted property or to provide a Statement to a beneficiary with regard to excepted property.

ii. *Exceptions for cash and other property*.

Proposed 1.6035-1(b)(1)(i) excepts cash (other than a coin collection or other bills or coins with numismatic value) from the reporting requirements under section 6035. To provide more precision and clarity, §1.6035-1(f)(2)(i) of the final regulations replaces the exclusion for cash with an exclusion for United States dollars. *United States dollars* are defined in §1.6035-1(f)(3) of the final regulations as the official currency of the United States. For purposes of section 6035, the term United States dollars includes physical bills and coins if the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills or coins typically do not have a value equal to their face value.

Many commenters requested that the exception for cash in the proposed regulations be expanded to include cash equivalents. In response to these comments, §1.6035-1(f)(2) of the final regulations expands the list of excepted property to include property the value of which is equal to its face value and that either is expressed in United States dollars or will be paid in United States dollars. This excepted property includes: (1) United States dollar-denominated demand deposits; (2) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit); (3) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars; and (4) Federal, State, and local tax refunds and other refunds payable in United States dollars. Certificates of deposit are excepted property because their Federal estate tax value generally equals their face value plus interest accrued to the date of death. Similarly, shares in money market funds are excepted property under the final regulations.

A commenter suggested that notes having a Federal estate tax value equal to the outstanding principal balance of the note should be considered a cash equivalent. Another commenter suggested that such notes should be excepted because the disposition of such property will never be a recognition event. The Treasury Department and the IRS decline to adopt these suggestions because notes have basis and the face value of the note may not always equal the final value of the note for Federal estate tax purposes. *See* §20.2031-4. However, if a note is forgiven in full by the decedent at death, the underlying indebtedness is discharged and no property having basis remains for distribution to a beneficiary. Accordingly, excepted property also includes notes that are forgiven in full by the decedent at death, whether or not denominated in United States dollars.

In further response to the aforementioned comments as well as additional comments received regarding property qualifying for limited reporting under the cash exception, the Treasury Department and the IRS note that the following items do not fall within the list of excepted property in §1.6035-1(f)(2) of the final regulations: (1) currency other than in United States dollars; (2) any payments not made in United States dollars; (3) life insurance policies not paid in United States dollars, and life insurance policies payable to a beneficiary in United States dollars annually or at some other interval for a period of time after the decedent's death; (4) notes (other than an installment obligation subject to section 453) that the decedent did not forgive in full upon the decedent's death, whether or not expressed in United States dollars; (5) U.S. Savings bonds; and (6) accounts receivable (unless such property consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691 (IRD)). This property generally has basis, its value generally may not equal its face value and, accordingly, this property is not excepted from the reporting requirements in the final regulations. For the same reasons, digital assets as defined in section 6045(g)

(3)(D), including virtual currency[2] or cryptocurrency, do not fall within the list of excepted property set forth in §1.6035-1(f)(2) of the final regulations. Consistent with all of the above, the list of excepted property is expanded and clarified in §1.6035-1(f)(2) of the final regulations. With respect to future modifications to property qualifying as excepted property, §1.6035-1(f)(2)(xiv) of the final regulations provides that excepted property will include any other property that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin.

The Treasury Department and the IRS note that certain beneficiaries in receipt of included property may have a basis in that property different from the value of that property as expressed in United States dollars, and therefore may have to convert the final value of that property into a currency other than United States dollars in order to determine their initial basis in that property. Such a beneficiary includes a qualified business unit (within the meaning of section 989) of a person that has a functional currency other than the United States dollar. *See* sections 985 through 989 for rules regarding the functional currency of a qualified business unit.

iii. *Exception for household and personal effects*.

Proposed 1.6035-1(b)(1)(iii) excepts from the reporting requirements tangible personal property for which an appraisal is not required under §20.2031-6(b). Section 20.2031-6(b) requires an appraisal if the decedent's household and personal effects include articles having marked artistic or intrinsic value with a total value in excess of $3,000. In response to a comment, these items are described in the final regulations as household and personal effects, rather than as tangible personal property, to conform more closely with §20.2031-6(b).

Commenters asked whether the $3,000 threshold applies to each article or to the collective value of all the tangible personal property includible in the gross estate. In addition, one commenter asked how to allocate the final value of articles of household and personal effects appraised as a single set or group if the estate distributes parts of that set or group among different beneficiaries (for example, the gross estate includes a 24-piece silver flatware set with a final value of $4,000, and the set is divided between two beneficiaries). The commenter suggested that the executor be given the authority to use any reasonable method to allocate the final value (and thus the basis) of the parts of the set or group among the beneficiaries. Finally, commenters noted that the $3,000 threshold amount found in §20.2031-6(b) has remained static since 1958 and asked that it be increased.

The Treasury Department and the IRS understand the need for clarity on how to apply the exception in the proposed regulations for tangible personal property. However, addressing this issue in the final regulations necessarily would impact determinations of whether an appraisal is required under §20.2031-6(b) and how to allocate the value of estate property among beneficiaries. These issues, including any change to the threshold amount under §20.2031-6(b), are more appropriately addressed in guidance under section 2031 related to the valuation of household and personal effects. Accordingly, §1.6035-1(f)(2)(ix) of the final regulations preserves the exception and does not address the commenters' questions.

iv. *Exceptions for property whose basis is unrelated to the Federal estate tax value of the property*.

Because section 1014(a) does not apply to the right to income in respect of a decedent as defined in section 691 (IRD), the Federal estate tax value of IRD does not affect its basis in the hands of the beneficiary acquiring that property. Accordingly, proposed §1.6035-1(b)(1)(ii) excepts IRD from the reporting requirements. The Treasury Department and the IRS deem it appropriate in the final regulations to more generally except from full section 6035 reporting requirements property having a basis that is determined without reference to the property's Federal estate tax value, including IRD. A beneficiary receiving such property has no need to receive a Statement providing the Federal estate tax value of such property. Several types of IRD are listed separately in the regulations. These assets, such as individual retirement accounts (IRAs), may have an IRD component and a non-IRD component of basis. The following paragraphs discuss comments relating to reporting exceptions or suggested exceptions for property having a basis that is determined without reference to the property's Federal estate tax value.

Multiple commenters sought clarification on whether certain IRD property having a basis component is excepted from the full section 6035 reporting requirements, particularly in the case of certain retirement plans, annuities, installment obligations, and interests in passthrough entities holding an item of IRD.

With regard to annuity contracts subject to section 72 and installment obligations subject to section 453, commenters suggested that the final regulations clarify that, despite having a basis component, such property be excepted because no basis adjustment occurs with respect to such property at the decedent's death. The Treasury Department and the IRS agree and, accordingly, such property is identified in §1.6035-1(f)(2)(xi) of the final regulations as examples of property having a basis that is determined without reference to the property's Federal estate tax value. For the same reason, §1.6035-1(f)(2)(xi) of the final regulations also includes, as an example of such excepted property, any amounts received under an annuity contract, such as a lump sum payment paid to terminate an annuity contract or a death benefit paid under an annuity contract.

Multiple commenters sought clarification as to whether IRAs and other retirement plans and deferred compensation plans come within the IRD exception in the proposed regulations. Commenters noted that, in certain scenarios, a decedent will have basis in such an account or plan, in addition to IRD. One commenter asserted that the reporting typically

[2] Virtual currency is defined for Federal income tax purposes as a digital representation of value that functions as a medium of exchange, a unit of account, or a store of value other than the United States dollar or a foreign currency. See Notice 2014-21, 2014-16 I.R.B. 938; Rev. Rul. 2019-24, 2019-44 I.R.B. 1004. Some digital assets are referred to as virtual currency or cryptocurrency.

required for these accounts or plans outside of the section 6035 reporting requirements is sufficient and suggested adding an exception to the final regulations so that the section 6035 reporting requirements will not apply to property in or distributions from retirement plans (whether or not tax-deferred). Such property, when acquired from a decedent, generally has a basis that is determined without reference to the property's Federal estate tax value. Therefore, distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, are included as examples of property coming within the exception from full reporting in §1.6035-1(f)(2)(xi) of the final regulations.

In other instances in which property consists only in part of a right to receive IRD, such as an interest in a passthrough entity that holds an interest constituting IRD, commenters sought clarification on the scope of the IRD exception to section 6035 reporting. In most cases, the basis of such property is determined under section 1014(a), even though the basis under section 1014(a) may be adjusted to account for the items of IRD. Because the Federal estate tax value of such property is relevant to the determination of the recipient's basis in the property, such property does not come within the exception for property having a basis determined without reference to the property's Federal estate tax value in §1.6035-1(f)(2)(xi) of the final regulations. That exception is limited to property that consists entirely of IRD.

Finally, in response to other requests for clarification, appreciated property described in section 1014(e) that is acquired by a decedent within 1 year of death, for which basis is not adjusted under section 1014(a), also is included as an example of property coming within the exception from full reporting in §1.6035-1(f)(2)(xi) of the final regulations.

v. *Exceptions for property sold, exchanged, or disposed of prior to distribution*.

Proposed §1.6035-1(b)(1)(iv) excepts property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized. Commenters asserted that this exception as proposed suggests that the reporting requirements would continue to apply to property sold, exchanged, or otherwise disposed of by the estate if no gain or loss is recognized because the sales price equals the estate's basis in the property. Commenters suggested, and the Treasury Department and the IRS agree, that the reporting requirements should not apply to property disposed of in a recognition transaction for the estate for income tax purposes, whether or not gain or loss is recognized, because the basis of this property is no longer related to the property's Federal estate tax value. The Treasury Department and the IRS also agree with commenters that, for purposes of the reporting required under section 6035, it is irrelevant whether any gain or loss the estate recognizes is capital or ordinary. The final regulations under §1.6035-1(f)(2)(x) include these clarifying changes. In addition, in response to requests for additional clarification, §1.6035-1(f)(2)(x)(A) through (E) of the final regulations include examples of excepted property pursuant to this rule as follows: (1) property distributed in satisfaction of a pecuniary bequest on which the estate recognizes any gain or loss pursuant to §1.661(a)-2(f); (2) property for which an election under section 643(e)(3) has been made for the estate to recognize any gain or loss; (3) interests in business entities that are redeemed for United States dollars prior to distribution to a beneficiary; (4) property disposed of in a transaction described in section 267(a) and (b)(13), which disallows a loss from the sale or exchange of property, directly or indirectly, between the executor and the beneficiary of the estate, except in a sale or exchange in satisfaction of a pecuniary bequest; and (5) property subject to the mark to market accounting method at the time of distribution from the estate or from the decedent's revocable trust.

Similarly, §1.6035-1(f)(2)(xii) of the final regulations excepts bonds to the extent that they are redeemed by the issuer for United States dollars prior to being distributed to a beneficiary so that any gain or loss is recognized by the estate.

vi. *Exception for property included in the gross estate of a beneficiary*.

A commenter suggested that an exception to the reporting requirements should apply if the beneficiary of property acquired from a decedent dies shortly after that decedent and that property then is included in the deceased beneficiary's gross estate. In this case, the deceased beneficiary does not need a Statement identifying the value of that property because the basis of that property will be determined as of the beneficiary's date of death, thus independently of the determination of the final value of that property in the decedent's estate. Accordingly, §1.6035-1(f)(2)(xiii) of the final regulations identifies property included in the gross estate of a beneficiary who died before the due date of the Information Return as excepted property subject to only limited reporting.

vii. *Publicly traded securities*.

Two commenters suggested that publicly traded securities should be excepted from the reporting requirements, both to reduce burden and because §1.6045A-1(b)(8) already requires basis reporting for certain publicly traded securities. This suggestion is not adopted in the final regulations because, while §1.6045A-1(b)(8) requires basis reporting between brokers if certain securities are transferred, it does not always require reporting to the IRS and the beneficiary. It would be burdensome for both taxpayers and the IRS to distinguish between those covered securities and others, including shares held in certificate form, for purposes of complying with these reporting requirements. Further, the information to be transferred between brokers might not always be the final value of the security for Federal estate tax purposes. Additional detailed information regarding the reporting of securities requested by commenters may be provided in forms and instructions.

viii. *Other*.

One commenter requested a reporting exception for property transferred to a charity or nonresident who is not a citizen of the U.S. (nonresident noncitizen) based on the assumption that charities and

nonresident noncitizens have no need for basis information. Basis information for such property is relevant in certain circumstances, such as for the computation of the excise tax on a private foundation, and, therefore, this suggestion is not adopted.

G. *Identification of beneficiaries*.

The proposed regulations under §1.6035-1(c)(1) describe the reporting requirements as they apply to different beneficiaries, including a beneficiary who is also an executor, a beneficiary of a life estate, a beneficiary of a remainder interest and a beneficiary of a contingent interest. Proposed §1.6035-1(c)(2) describes the reporting requirements as they apply to a beneficiary that is a trust, estate, or other entity. Proposed §1.6035-1(c)(3) describes the reporting requirements applicable if the beneficiary of particular included property has not been identified by the due date of the required reporting. Finally, proposed §1.6035-1(c)(4) describes the reporting requirements applicable if a beneficiary cannot be located by the executor.

As discussed in part 2.C.i. of this Summary of Comments and Explanation of Revisions, many commenters objected to the proposed reporting requirements under §1.6035-1(c)(3) that would have applied in the case of an executor who has not determined what property will be used to satisfy the interest of each beneficiary by the due date of the Information Return. The section 6035 reporting requirements have been modified in §1.6035-1(c) of the final regulations to address the concerns of the commenters. However, additional comments were received on the other beneficiary provisions in proposed §1.6035-1(c). A discussion of these comments and responses to these comments, as well as a discussion of certain clarifying changes made in §1.6035-1(g) of the final regulations, follows.

i. *Definition of beneficiaries*.

Section 1.6035-1(g)(1) of the final regulations defines the term *beneficiary* to refer to a person who acquires (or will acquire) property subject to reporting described in §1.6035-1(e) of the final regulations. A beneficiary may be an individual (including one who is the executor as well as a beneficiary), the estate of a deceased individual who survived the decedent, a trust (referred to as a *beneficiary trust*), or an entity other than a trust, including without limitation a business entity or an organization described in section 501(c).

ii. *Beneficiary trust*.

Proposed §1.6035-1(c)(2) directs that, if the beneficiary is a trust, estate, or other entity, the executor is to furnish the beneficiary's Statement to the trustee of the trust or similar representative of the estate or other entity, rather than to the beneficiaries or other owners of that trust or other entity. This provision generated several comments. Some commenters questioned whether the Statement should be given to the trustee or to the trust's beneficiary. They noted that, because there are many different types of trusts and varying circumstances, an inflexible rule is not necessarily appropriate in this context. For instance, some trusts terminate at death or shortly thereafter and the trustee distributes the trust property in kind, while other trusts continue in existence for many generations. In some cases, it may be unclear when a trust terminates because an existing trust may be decanted or divided into several trust shares or different trusts. Some trusts are for the benefit of only one beneficiary, such as a marital trust, but other trusts may be for a class of different beneficiaries. In addition, sometimes, the executor may not be able to get information about the provisions or beneficiaries of an inter vivos trust, although the trust property is includible in the decedent's gross estate for Federal estate tax purposes.

After consideration of the comments, the Treasury Department and the IRS agree that there are circumstances under which it would be appropriate for an executor to furnish the Statement to the trustee of a beneficiary trust and different circumstances warranting the furnishing of the Statement directly to the trust beneficiary(s). Section 6035 contemplates that the Statement will be received by a person or entity that is likely to engage in an income tax recognition event with respect to the property. A trust that terminates at the death of the decedent or shortly thereafter is unlikely to have such an event, unlike a trust that continues for many years. Any rule attempting to distinguish between these different circumstances would be both complex and likely to fail to address the entire universe of possibilities.

Accordingly, in order to respond to the comments, and to avoid undue complexity in regulations, the Treasury Department and the IRS conclude that it is appropriate to adopt a flexible rule for identifying the beneficiary to whom the executor must furnish the Statement in the case of a beneficiary trust. Section 1.6035-1(g)(2)(i) of the final regulations provides that the executor must furnish the Statement to the trustee, rather than to the beneficiaries of the trust, but allows the executor instead to furnish the Statement directly to the beneficiaries of the trust, with a copy to the trustee, if the executor reasonably believes that it is unlikely that the trust will depreciate, sell, or otherwise dispose of the property in a recognition event for income tax purposes. For this purpose, a trust's beneficiaries include all potential current income beneficiaries and each remainderman who would have had a current interest in the trust if one or more of the income beneficiaries had died immediately before the decedent.

Commenters also requested clarification of the executor's obligation to furnish a Statement regarding the property of an inter vivos trust included in the decedent's gross estate for Federal estate tax purposes. In this situation, the executor is not distributing the trust property to the trustee and, assuming the executor reported the trust on the estate tax return, the trustee is not the executor required to file that estate tax return. If the trust property is reported on the estate tax return filed by the executor of the estate, that executor is subject to the reporting requirements as described in this section with regard to the trust property. Except for the reporting required under §1.6035-1(h) of the final regulations, it is only in the situations described in §1.6035-1(b)(2) of the final regulations, in which a trustee of a trust might be an executor required to file an estate tax return with regard to trust property, that the trustee would be required to file the Information Return and Statement(s) with

regard to the trust property reported on the estate tax return filed by that trustee.

Commenters requested guidance on how to comply with the reporting requirements to a beneficiary trust if that trust is not yet established by the due date of the Information Return. In response, §1.6035-1(g)(2)(ii) of the final regulations provides that, if by the due date of the Information Return, a beneficiary trust does not have at least one trustee and a tax identification number from the IRS, an executor must report on the Information Return that the beneficiary trust is not yet established in accordance with the instructions. Supplemental reporting is required once the beneficiary trust is established.

iii. *Furnishing Statement to beneficiary of split interest in property, not in trust*.

Section 1.6035-1(g)(3) of the final regulations retains and clarifies certain aspects of the rules in proposed §1.6035-1(c)(1) applicable to beneficiaries of split interests in property not in trust. Under §1.6035-1(g)(3) of the final regulations, the beneficiary of a life estate not in trust is the life tenant, and the beneficiary of a remainder interest not in trust is each remainderman, identified as if the life tenant were to die immediately after the decedent. For purposes of determining the due date for furnishing Statements to such beneficiaries under §1.6035-1(c)(3) of the final regulations, each beneficiary will be deemed to have acquired the property subject to reporting on the date of the decedent's death. Section 1.6035-1(g)(3) of the final regulations further provides that the beneficiary of a contingent interest not in trust is a beneficiary only if the contingency occurs before the end of the period during which the executor has an obligation to supplement the reporting as provided in §1.6035-1(d)(5) of the final regulations. If the contingency occurs during this period, §1.6035-1(g)(3) of the final regulations provides that the executor must update the beneficiary information on the Information Return and furnish a Statement to that beneficiary pursuant to the executor's duty to supplement to report a change in beneficiary information as described in §1.6035-1(d) of the final regulations. Section 1.6035-1(g)(3) of the final regulations clarifies that usufruct interests are treated in the same manner.

Several commenters requested confirmation that, for purposes of complying with the reporting requirements of section 6035(a), the executor is not required to determine the allocation of uniform basis among the beneficiaries with interests in an asset for different periods of time. The Treasury Department and the IRS agree that nothing in section 6035(a) requires the executor to report to a beneficiary of such an interest that beneficiary's share of uniform basis as of the decedent's date of death. It is only the value of the entire property that is the subject of the required reporting. Therefore, §1.6035-1(c)(2) of the final regulations provides that an executor is required to identify the property acquired by the beneficiaries, the value of the property as reported on the estate tax return filed with the IRS, and such other information prescribed by the Statement and the instructions.

iv. *Reporting for a missing beneficiary*.

In response to comments, §1.6035-1(g)(4) of the final regulations modifies the rule in proposed §1.6035-1(c)(4) with regard to the applicable reporting requirements if the executor cannot locate a beneficiary. The proposed rule provides that an executor must use reasonable due diligence to identify and locate all beneficiaries and, if the executor is unable to locate a beneficiary by the due date of the Information Return, the executor must so report on the Information Return and explain the efforts the executor has taken to locate the beneficiary and to satisfy the obligation of reasonable due diligence. Commenters requested an explanation or definition of "reasonable due diligence" for this purpose. In referencing "reasonable due diligence" in the proposed regulations, the Treasury Department and the IRS intended only to reference an executor's responsibility as a fiduciary under local law to identify and locate all beneficiaries and did not intend to create a new standard. Therefore, the requirement of due diligence is removed in the final regulations. Instead, §1.6035-1(g)(4) of the final regulations provides that, if the executor is unable to locate a beneficiary by the date required for filing the Information Return with the IRS, then the executor must report on the Information Return the failure to locate the beneficiary and the efforts the executor has made to locate the beneficiary. The final regulations retain the requirement to supplement the Information Return and to furnish the required Statement to the beneficiary once the beneficiary has been located or, if the beneficiary is not located, to report the distribution of the property to a different beneficiary.

H. *Subsequent transfers of property subject to reporting*.

Proposed §1.6035-1(f) would impose a reporting requirement with regard to certain subsequent transfers of property previously reported (or required to be reported) on a Statement. Specifically, it would require the recipient of property to which section 6035 applies to file with the IRS a supplemental Information Return, and to furnish to a transferee of the property a Statement, if the recipient (who becomes the transferor) distributes or transfers all or any portion of that property in a transaction in which the transferee determines its basis, in whole or in part, by reference to the transferor's basis.

Commenters asserted that section 6035 imposes reporting requirements on executors, but not on subsequent transferees and, therefore, the Treasury Department and the IRS lack authority to require reporting under section 6035 by beneficiaries who subsequently transfer property acquired from a decedent. Commenters also noted that this reporting requirement could continue for generations, and thus be impossible for the IRS to monitor and enforce, especially with respect to nonresident non-citizen beneficiaries if the property is no longer in the United States. Commenters also noted that this subsequent reporting requirement creates uncertainty for executors, estate tax return preparers, and beneficiaries as to whether supplemental reporting is required, and that the failure to comply with the reporting requirement is subject to penalties. They contended this requirement is particularly unfair with respect to unsophisticated individual recipients who are likely to be unaware of the reporting requirements and, as a result, are more likely to become subject

to noncompliance penalties. Finally, commenters noted that, in many cases, the obligation to report the basis of property transferred is duplicative of other required filings.

The Treasury Department and the IRS carefully have reconsidered the benefits and burdens of the proposed subsequent reporting requirement in light of these comments. The enactment of section 1014(f) created the consistent basis requirement, and the enactment of section 6035 gave the IRS the ability to enforce the provisions of section 1014(f) and the related penalty under section 6662(k) for use of an inconsistent estate basis for income tax purposes. Without this proposed reporting requirement, subsequent ownership changes made through nonrealization events would erode the ability of the IRS to enforce the consistent basis requirement under section 1014(f) and the penalty under section 6662(k) for violations of that requirement.

Nevertheless, the Treasury Department and the IRS conclude that the burden of the proposed subsequent reporting requirement, including the potential penalties for noncompliance, is too heavy a burden to impose on individual beneficiaries who, as a practical matter, may have no way of knowing of the existence of, or of how to comply with, this subsequent reporting requirement. The Treasury Department and the IRS, however, also conclude that trustees of trusts are one class of beneficiaries for whom the subsequent reporting requirement would not be sufficiently burdensome to outweigh the needs of, and benefits to, the IRS and trust beneficiaries. Generally, the trustee of a trust is likely to be aware of applicable tax requirements and to be both able and motivated to comply with these requirements. In addition, in discharging the trustee's fiduciary obligations to the trust beneficiaries, a trustee is likely (even without a supplemental reporting requirement) to provide certain relevant information (such as basis) to the beneficiary to whom the trustee is distributing a trust asset.

Accordingly, the final regulations retain a reporting requirement for subsequent transfers, but this requirement is narrowed significantly. Under §1.6035-1(h)(1) of the final regulations, reporting requirements are imposed on trustees of beneficiary trusts making a distribution of property that was reported on a Statement furnished to those trustees, or of any other property the basis of which is determined, in whole or in part, by reference to the basis of this property. Such a trust distribution includes, for example, a transfer of trust property pursuant to the exercise or lapse of a person's power of appointment (whether general or limited). That section further provides that trustees of trusts that receive a distribution of such property, whether from a beneficiary trust or from any other trust that has received such property, either directly or indirectly, also are subject to these reporting requirements when making a distribution of that property. This reporting obligation imposed on trustees continues to apply for each subsequent transfer or distribution until the property is distributed to a beneficiary not in trust. However, these reporting requirements do not apply if property is disposed of by the trustee in a transaction that is a recognition event for income tax purposes (whether or not resulting in a gain or loss) that results in the entire property having a basis that no longer is related, in whole or in part, to the property's final value or, if applicable, reported value (within the meaning of §1.1014-10(b)(1) or (2) of the final regulations, respectively).

By imposing a reporting obligation on trustees of beneficiary trusts and certain other recipient trusts, the final regulations ensure that an individual or entity likely to incur an income tax realization event with respect to the trust property has the necessary information to determine the correct initial basis. This facilitates the proper reporting of basis and compliance with the consistent basis requirement if it is applicable.

Finally, to reduce burden and improve administrability, §1.6035-1(h)(2) of the final regulations adopts the same due date for the filing of the Information Return and the furnishing of the Statement with regard to distributions of property by trustees as is required under §1.6035-1(c)(3)(ii) of the final regulations, which is January 31 of the year following the distribution. Section 1.6035-1(h)(3) of the final regulations adds an example illustrating the application of the reporting requirements applicable to trustees making subsequent transfers of property if the property is subject to reporting under §1.6035-1(e) of the final regulations.

I. *Penalties*.

Section 1.6035-1(i) of the final regulations provides a cross-reference to sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724 that impose penalties on the failure to timely file a correct Information Return and the failure to timely furnish a correct Statement as required by section 6035. Sections 301.6721-1(h)(2)(xii) and 301.6722-1(e)(2)(xxxv) of these final regulations clarify that the penalties under those sections also apply to the failure to report as required by section 6035. A penalty applies separately to each initial or supplemental Information Return that the executor is required to file with the IRS, and to each initial or supplemental Statement that the executor is required to furnish to a beneficiary. Accordingly, only one penalty under section 6721 may be imposed for filing an incorrect Information Return, even if copies of multiple required Statements are not attached to the Information Return, but multiple penalties under section 6722 may be imposed for furnishing multiple incorrect Statements, even if the Statements were filed with the IRS as attachments to a single Information Return. Section 1.6035-1(i) of the final regulations also refers to section 6724 and the regulations in part 301 under section 6724 for rules relating to waivers of these penalties if it is shown that the failure was due to reasonable cause and not to willful neglect.

For purposes of applying these penalties, commenters inquired whether an appointed executor is relieved of the reporting requirements if a successor executor is appointed. The issue of an executor's continuing liability under the Code if a successor executor is appointed is not limited to the section 6035 reporting requirements and may depend on varying factors, including local law. Accordingly, this issue is outside the scope of these regulations and is not addressed in these final regulations.

Multiple commenters inquired about how to complete the Information Return and Statements in various scenarios, such as cases in which a nonresident noncitizen

is a beneficiary and has no tax identification number, a partnership is a beneficiary, an executor reports bulk assets and brokerage accounts on an estate tax return, and others. To the extent not otherwise addressed in the final regulations or this preamble, these comments are best considered in contemplation of necessary or appropriate revisions to the Information Return and its instructions.

J. *Applicability date*.

Proposed §1.6035-1(i) provides that, upon publication of the Treasury Decision adopting these rules as final in the **Federal Register**, §1.6035-1 of the final regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose estate tax return is filed after July 31, 2015. The final regulations revise the applicability date of §1.6035-1(i) of the proposed regulation consistent with section 7805(b)(1). Accordingly, §1.6035-1(j) of the final regulations does not reference the July 31, 2015, effective date of section 6035, and provides instead that §1.6035-1 of the final regulations applies to executors of a decedent's estate who are required to file an estate tax return under section 6018 if that return is filed after the date of publication of these final regulations in the **Federal Register**, and to trustees receiving certain property included in the gross estate of such a decedent.

3. *Section 6662 — Inconsistent Estate Basis Reporting*

Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax relating to property subject to the consistent basis requirement that is attributable to an inconsistent estate basis. Proposed §1.6662-8(b) provides that there is an inconsistent estate basis to the extent that a taxpayer claims a basis, without regard to the adjustments described in proposed §1.1014-10(a)(2), in property described in proposed §1.6662-8(c) that exceeds that property's final value as determined under proposed §1.1014-10(c). Proposed §1.6662-8(c) provides that proposed §1.6662-8(b) applies to property described in proposed §1.1014-10(b) that is reported or required to be reported on an estate tax return filed after July 31, 2015.

One commenter noted that the phrase "without regard to the adjustments described in §1.1014-10(a)," as used in proposed §1.6662-8(b), eliminates adjustments that correctly may be made by other sections of the Code on or after the decedent's date of death. The commenter's concern was that this language would void the effects of, or disallow the adjustments available under, other sections of the Code.

Section 1.6662-9(b) of the final regulations clarifies that there is an inconsistent estate basis to the extent that a taxpayer claims a basis that was determined by using an initial basis as defined in §1.1014-10(a)(2) of the final regulations that exceeds the property's final value as determined under §1.1014-10(b)(1) of the final regulations. The property to which this section applies is property described in §1.1014-10(c)(1) of the final regulations. In addition, §1.1014-10(a)(2) of the final regulations confirms that the taxpayer may compute basis at any time by adjusting the property's initial basis due to the operation of other provisions of the Code without violating the consistent basis requirement. Section 1.6662-9(b)(2) of the final regulations provides an example illustrating the provisions of §1.6662-9(b) of the final regulations. The provisions regarding the reasonable cause exception to the penalty are contained in section 6664 and the regulations in part 1 under section 6664.

In the final regulations, proposed §1.6662-8 has been redesignated as §1.6662-9. Section 1.6662-8 is being reserved for future regulations to address other provisions under section 6662.

Special Analyses

1. *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.

2. *Paperwork Reduction Act*

The collection of information contained in these final regulations has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2264. On March 4, 2016, proposed regulations (REG-127923-15) were published in the **Federal Register** (81 FR 11486). The proposed regulations proposed amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301). Comments were specifically requested concerning (1) whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collection of information; (3) how the quality, utility, and clarity of the information to be collected may be enhanced; (4) how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

During the comment period, the IRS received 5 comments on the collection of information. With respect to the necessity and utility of the proposed collection of information, a commenter contended that the reporting requirements in section 6035 are intended solely to implement and enforce the basis consistency requirement under section 1014(f) and, therefore, reporting should be limited to property subject to section 1014(f). The Treasury Department and the IRS did not accept this recommendation because this comment appears to be based on a budget proposal rather than on section 6035 as enacted and its history. *See* U.S. Dept. of the Treasury, *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals*, 160-161 (2014). Based on the language of section 6035(a)(1) and (2), Congress mandated that report-

ing apply to a larger universe of property than the universe of property subject to the consistent basis requirement under section 1014.

Regarding the accuracy of the estimated burden associated with the collection of information, commenters indicated that the IRS estimate of the total annual reporting burden per respondent of 5.31 hours was too low. Commenters estimated that the total annual reporting burden per respondent should be 20 to 50 hours. Taking into account the input from the commenters regarding the number of hours needed to comply, as well as new rules in the final regulations that reduce certain reporting burdens, the Treasury Department and the IRS increased the estimated total annual reporting burden per respondent from 5.31 hours to 20 hours.

With respect to how the burden of complying with the proposed collection of information may be minimized, a commenter suggested that the IRS could minimize the burden of complying with the proposed collection of information by accepting Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, and Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, along with a statement identifying the beneficiaries, rather than requiring duplicative reporting on the 6035 Information Return (currently, Form 8971, *Information Regarding Beneficiaries Acquiring Property From a Decedent*). Another commenter suggested that, if the executor is the only beneficiary required to receive the Statement, the IRS could reduce the cost of compliance by allowing the executor to check a box on Form 706 certifying that fact. This commenter also suggested that the reporting requirements could be satisfied by giving beneficiaries an appropriately redacted copy of the filed Form 706.

The Treasury Department and the IRS did not accept this recommendation because the filing of Form 709 does not trigger a section 6035 filing requirement of Form 8971 and Schedule A. Further, through its amendment of section 6724(d)(1) and (2) and the enactment of section 6035, both pursuant to section 2004 of the 2015 Act, Congress identified the statement required by section 6035(a)(1) and (2) to be filed with the IRS as an *information return*, and the statement required by section 6035(a)(2) to be furnished to a beneficiary as a *payee statement*. The Treasury Department and the IRS conclude that replacing the information return and payee statement identified in section 6724 with a beneficiary statement attached to the Form 706, a redacted Form 706, or the checking of a box on the Form 706 would be contrary to legislative intent and the statutory language of section 6724(d)(1)(D) and (d)(2)(II).

A commenter suggested that the optional ability to electronically file returns, including Forms 706 and 709, would facilitate compliance with the section 6035 reporting requirements and enhance efficiency. The Treasury Department and the IRS concur that the ability to electronically file not only Forms 706 and 709, but also Form 8971 and Schedule A, would facilitate compliance with the section 6035 reporting requirements and enhance efficiency. At this time, however, taxpayers are unable to electronically file Forms 706 and 709.

Several comments were received with substantive recommendations that relate to whether the collection of information will have practical utility and how the burden of compliance could be minimized (including specific recommendations to expand the exceptions to the section 6035 reporting requirements, modify the reporting requirements in certain circumstances, and limit or eliminate the subsequent transfer reporting requirement). These comments are addressed in the Summary of Comments and Explanation of Revisions section of this preamble.

The collection of information in these final regulations is in §1.6035-1(c)(1) and (2), (d)(1) and (2), and (h)(1) and (2). The collection of information is necessary to comply with the reporting requirements under section 6035(a). The likely respondents are executors and other persons required to file an estate tax return under section 6018 and trustees making in-kind distributions of property that was subject to reporting under section 6035 when initially acquired by the trustee.

Estimated number of respondents: 10,000.

Estimated average annual burden per respondent: 20 hours.

Estimated total annual reporting burden: 200,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the OMB.

3. *Regulatory Flexibility Act*

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule primarily affects individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although it is anticipated that there may be an incremental economic impact on executors that are small entities, including entities that provide tax and legal services that assist individuals in preparing tax returns, any impact would not be significant and would not affect a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation 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.

4. Unfunded Mandates Reform Act

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

5. *Executive Order 13132: Federalism*

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

Statement of Availability of IRS Documents

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

Drafting Information

The principal authors of these final regulations are Donna Douglas, Melissa Liquerman, and Karlene Lesho of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

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.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS are amending 26 CFR parts 1 and 301 as follows:

PART 1 – INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising entries for §§1.1014-1 and 1.1014-2, and adding entries for §§1.1014-10, and 1.6035-1 in numerical order to read as follows:

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

Section 1.1014-1 also issued under 26 U.S.C. 1014(f).

Section 1.1014-2 also issued under 26 U.S.C. 1014(f).

Section 1.1014-10 also issued under 26 U.S.C. 1014(f).

* * * * *

Section 1.6035-1 also issued under 26 U.S.C. 6035.

* * * * *

Par 2. Add § 1.1014-0 to read as follows:

§1.1014-0 Table of contents.

This section lists the captions contained in §§1.1014-1 through 1.1014-10.

§1.1014-1 Basis of property acquired from a decedent.

(a) General rule.
(b) Scope and application.
(c) Property to which section 1014 does not apply.
(d) Applicability date.

§1.1014-2 Property acquired from a decedent.

(a) In general.
(b) Property acquired from a decedent dying after December 31, 1953.
(1) In general.
(2) Rules for the application of paragraph (b)(1) of this section.
(3) Exceptions to application of this paragraph.
(c) Special basis rules with respect to certain property acquired from a decedent.
(1) Stock or securities of a foreign personal holding company.
(2) Spouse's interest in community property of decedent dying after October 21, 1942, and on or before December 31, 1947.

§1.1014-3 Other basis rules.

(a) Fair market value.
(b) Property acquired from a decedent dying before March 1, 1913.
(c) Reinvestments by a fiduciary.
(d) Reinvestments of property transferred during life.
(e) Alternate valuation dates.

§1.1014-4 Uniformity of basis; adjustment to basis.

(a) In general.
(b) Multiple interests.
(c) Records.
(d) Effective/applicability date.

§1.1014-5 Gain or loss.

(a) Sale or other disposition of a life interest, remainder interest, or other interest in property acquired from a decedent.
(b) Sale or other disposition of certain term interests.
(1) In general.
(2) Effective/applicability date.
(c) Sale or other disposition of a term interest in a tax-exempt trust.
(1) In general.
(2) Tax-exempt trust defined.
(3) Taxable beneficiary defined.
(4) Effective/applicability date.
(d) Illustrations.

§1.1014-6 Special rule for adjustments to basis where property is acquired from a decedent prior to his death.

(a) In general.
(b) Multiple interests in property described in section 1014(b)(9) and acquired from a decedent prior to his death.
(c) Adjustments for deductions allowed prior to the decedent's death.

§1.1014-7 Example applying rules §§1.1014-4 through 1.1014-6 to case involving multiple interests.

§1.1014-8 Bequest, devise, or inheritance of a remainder interest.

§1.1014-9 Special rule with respect to DISC stock.

(a) In general.
(b) Portion of property acquired from decedent before his death included in decedent's gross estate.
(1) In general.

(2) Example.

(c) Estate tax valuation date.

(d) Examples.

§1.1014-10 Basis of property acquired from a decedent must be consistent with property's Federal estate tax value.

(a) Consistent basis requirement.

(1) General rule.

(2) Initial basis in consistent basis property and effect of basis adjustments.

(3) Duration of consistent basis requirement.

(b) Final value and reported value.

(1) Final value.

(2) Reported value if no final value yet determined.

(3) Special rules.

(c) Consistent basis property.

(1) Property subject to the consistent basis requirement.

(2) Property excepted from or not subject to the consistent basis requirement.

(d) Definitions.

(e) Examples.

(f) Applicability date.

Par. 3. Section 1.1014-1 is amended by:

1. Adding two sentences after the fourth sentence of paragraph (a).

2. Revising the last sentence and adding two sentences after the last sentence of paragraph (b).

3. Revising paragraphs (c) and (d).

The addition and revisions read as follows:

§1.1014-1 Basis of property acquired from a decedent.

(a) * * *For certain property acquired from a decedent, the initial basis of the property must not exceed the property's final value for Federal estate tax purposes. *See* section 1014(f) and §1.1014-10 for rules relating to the consistent basis requirement. * * *

(b) * * *In §§1.1014-1 to 1.1014-6, inclusive, and §1.1014-10, whenever the words *property acquired from a decedent* are used, they also mean *property passed from a decedent*, and the phrase *person who acquired it from the decedent* includes the *person to whom it passed from the decedent*. The consistent basis rules in §1.1014-10 apply to property subject to the consistent basis requirement, as described in §1.1014-10(c)(1). For property subject to the consistent basis requirement, the rules in §1.1014-10 modify the rules set forth in paragraphs (a) and (c) of this section and in §§1.1014-2 through 1.1014-9.

(c) *Property to which section 1014 does not apply*. Section 1014 has no application to property that constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) *Applicability date*. This section applies after September 17, 2024. For rules on and before September 17, 2024, *see* § 1.1014-1 as contained in 26 CFR part 1 revised as of January 19, 2017.

Par. 4. Section 1.1014-2 is amended by revising the second sentence of paragraph (b)(2) as follows:

§1.1014-2 Property acquired from a decedent.

* * * * *

(b) * * *

(2) * * *Except as provided in §1.1014-10, it is not necessary for the application of this paragraph (b)(2) that an estate tax return be required to be filed for the estate of the decedent or that an estate tax be payable.* * *

* * * * *

Par. 5. Section 1.1014-10 is added to read as follows:

§1.1014–10 Basis of property acquired from a decedent must be consistent with property's Federal estate tax value.

(a) *Consistent basis requirement*—(1) *General rule*. The consistent basis requirement is the requirement that the initial basis in certain property be equal to or less than the property's final value as determined under paragraph (b)(1) of this section or, if no final value has yet been determined, the property's reported value for Federal estate tax purposes as described in paragraph (b)(2) of this section. The property subject to the consistent basis requirement is referred to in this section as consistent basis property and is described in paragraph (c)(1) of this section.

(2) *Initial basis in consistent basis property and effect of basis adjustments*. The initial basis in consistent basis property is the final value of the property, as determined under paragraph (b)(1) of this section, and, until the final value of this property is determined, the property's initial basis is the reported value, as described in paragraph (b)(2) of this section. The initial basis in consistent basis property may be adjusted pursuant to the operation of section 1014 or other provisions of the Internal Revenue Code (Code) governing basis, as applicable, and those adjustments will not violate the consistent basis requirement in paragraph (a)(1) of this section. For example, the initial basis in consistent basis property may be adjusted for gain recognized by the estate upon distribution of the property and for post-death capital improvements and depreciation. It also may be adjusted in the manner provided in section 1014(d) in the case of DISC stock and in the manner provided under subchapter K or S of chapter 1 of the Code, respectively, in the case of an interest in a partnership or S corporation.

(3) *Duration of consistent basis requirement*. The consistent basis requirement applies as long as the initial basis in consistent basis property is related, in whole or in part, to the property's final value, as determined under paragraph (b)(1) of this section, or, if applicable, the property's reported value, as determined under paragraph (b)(2) of this section. Therefore, regardless of the number of successive owners, the consistent basis requirement continues to apply until the entire property is sold, exchanged, or otherwise disposed of in one or more transactions that result in a recognition event for income tax purposes (whether or not resulting in a gain or loss) or until the entire property becomes includible in another decedent's gross estate. The consistent basis requirement applies whenever there is a taxable event with respect to the property, such as, but not limited to, a sale or exchange, depreciation, or amortization of the property. The expiration of the period of limitations on assessment for an income tax return that uses an incorrect basis in reporting a taxable event with respect to consistent basis property has no effect on the duty to determine basis under the rules of this section for purposes of reporting any subsequent taxable event with respect to the property if the consistent basis requirement contin-

ues to apply under the rule of this paragraph (a)(3).

(b) *Final value and reported value*—(1) *Final value*. The final value of consistent basis property is its fair market value as finally determined for Federal estate tax purposes. That value is—

(i) The value reported on an estate tax return filed with the IRS, once the period of limitations on assessment (*see* section 6501) of estate tax has expired without that value having been timely adjusted by the IRS; or

(ii) The value determined or specified by the IRS that differs from the value reported on an estate tax return filed with the IRS and the value specified by the IRS for other included property, as defined in paragraph (d)(4) of this section, once the period of limitations on assessment applicable to the estate tax has expired without that value having been timely contested by the executor, as defined in paragraphs (d)(1) and (2) of this section, respectively; or

(iii) The value determined in a written agreement with the IRS, (whether entered into in the course of the administrative proceedings between the estate and the IRS or after the commencement of litigation), once that written agreement has been executed by both the executor and the IRS and is binding on all parties (including, but not limited to, the executor, the IRS, and the beneficiaries); or

(iv) The value determined by a court for the purpose of determining the estate tax liability of the estate, as defined in paragraph (d)(3) of this section, once the court's determination no longer can be appealed to any court.

(2) *Reported value if no final value yet determined*—(i) *In general*. Prior to the determination of the final value in accordance with paragraph (b)(1) of this section, a taxpayer may not claim an initial basis in consistent basis property in excess of the property's value as reported on the Statement described in §1.6035-1(c)(2) and required under §1.6035-1 (as supplemented). This value is referred to in this section as the reported value. A value reported on a Statement (or a supplement to the Statement) that either reports a value from an estate tax return filed after the expiration of the period of limitations on assessment applicable to that return, or a value reported for property not reported on the estate tax return, is not a reported value for purposes of this section. *See* §1.6035-1(d) regarding an executor's duty to supplement the Statement.

(ii) *Limit on reliance on Statement not reporting final value*. If the final value of consistent basis property is determined (as described in paragraph (b)(1) of this section) before the expiration of the period of limitations on assessment for a taxpayer's income tax return that reports a taxable event with regard to the property, the taxpayer's reliance on a Statement (or a supplement to the Statement) that does not report the final value of the property may result in an income tax deficiency and underpayment. *See*, however, section 6664 and the corresponding regulations for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Special rules*—(i) *Property subject to debt*. The final value or, if applicable, the reported value of property subject to recourse or non-recourse debt is determined based on the gross value of that property undiminished by the debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the property or separately reports the gross value of the property and the outstanding debt.

(ii) *Special use property*. The final value or, if applicable, the reported value of special use property with regard to which a recapture event (described in section 2032A(c)(1)) has occurred is increased as provided in section 1016(c) if the qualified heir makes the election under section 1016(c) and pays the amounts required under that section.

(c) *Consistent basis property*—(1) *Property subject to the consistent basis requirement*—(i) *In general*. Except as provided in paragraph (c)(2) of this section, consistent basis property is any property—

(A) To which section 1014(a) applies;

(B) That is included property, as defined in paragraph (d)(4) of this section, if the decedent's Federal estate tax return is filed after July 31, 2015, and any other property the basis of which is determined, in whole or in part, by reference to the basis of included property (for example, property acquired in a like-kind exchange or an involuntary conversion); and

(C) Whose value increases the estate tax liability, as defined in paragraph (d)(3) of this section, that is payable after the application of allowable credits, as defined in paragraph (d)(5) of this section.

(ii) *Application*. If the decedent's Federal estate tax return is filed on or before July 31, 2015, no included property and no other property described in paragraph (c)(1)(i) of this section is subject to the consistent basis requirement, even if the due date of that return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015. If an estate tax liability is payable after the application of allowable credits, all property described in paragraphs (c)(1)(i)(A) and (B) of this section is considered property whose value increases the estate tax liability for purposes of paragraph (c)(1)(i)(C) of this section and, therefore, is subject to the consistent basis requirement, except as provided in paragraph (c)(2) of this section. If, after the application of allowable credits, no estate tax liability is payable, no such property is subject to the consistent basis requirement.

(2) *Property excepted from or not subject to the consistent basis requirement*. Notwithstanding paragraph (c)(1) of this section, the following property either is excepted from or is not subject to the consistent basis requirement—

(i) United States dollars (as defined in paragraph (d)(6) of this section).

(ii) United States dollar-denominated demand deposits.

(iii) Certificates of deposit denominated in United States dollars.

(iv) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit).

(v) Shares of a registered investment company priced in United States dollars that is a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2).

(vi) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars.

(vii) Federal, State, and local tax refunds and other refunds payable entirely in United States dollars.

(viii) Notes that are forgiven in full by the decedent upon death, whether or not denominated in United States dollars.

(ix) Household and personal effects for which an appraisal is not required under §20.2031-6(b) of this chapter.

(x) Property the initial basis of which is not in any way determined with regard to or derived from the property's final value as determined under paragraph (b)(1) of this section or its reported value as determined under paragraph (b)(2) of this section, if applicable. Such property includes but is not limited to—

(A) Annuity contracts subject to section 72 and amounts received as an annuity subject to section 72;

(B) An interest in property that consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691;

(C) Amounts received under installment obligations arising from a transaction for which the installment method for determining gain under section 453 applies;

(D) Appreciated property described in section 1014(e) that is acquired by the decedent within 1 year of death;

(E) Stock of a passive foreign investment company subject to section 1296(i), but only if the basis of such stock is the adjusted basis in the hands of the decedent immediately before the decedent's death; and

(F) Interests in and distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, that are expressed entirely in United States dollars.

(xi) Any interest in property that qualified for an estate tax marital deduction under section 2056, 2056A, or 2106(a)(3) for which such a deduction was properly claimed, and/or any interest in property that qualified for an estate tax charitable deduction under section 2055 or 2106(a)(2) for which such a deduction was properly claimed, provided that the value of the decedent's entire interest in the included property is wholly deductible and equal to the total amount qualifying for those deductions.

(xii) Property that represents the surviving spouse's one-half share of community property to which section 1014(b)(6) applies, regardless of whether this property is included property as defined in paragraph (d)(4) of this section.

(xiii) Property the basis of which is adjusted in a manner similar to section 1014(a) on the occurrence of a taxable termination that occurs on the death of a trust beneficiary pursuant to section 2654(a)(2) (to the extent the property is not then includible in the gross estate of any person).

(xiv) Any other property that is not described in paragraph (c)(1)(i) of this section or that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2)(ii)(*b*) of this chapter).

(d) *Definitions*. The following definitions apply for purposes of this section—

(1) *Contested*. The term *contested* means to put at issue the value of property in a written communication to the IRS that identifies the specific property, states that the executor does not accept as correct the value of that property as determined or specified by the IRS, and provides the executor's claimed value for that property as determined in accordance with the requirements of section 2031, the corresponding regulations, and other applicable guidance. An issue cannot be contested by a general statement or written communication that does not include each of these specified elements.

(2) *Executor*. The term *executor* includes any person described in section 2203, as expanded to include all persons required under section 6018(b) to file an estate tax return.

(3) *Estate tax liability*. The term *estate tax liability* means the amount of tax imposed under chapter 11 of the Code (chapter 11).

(4) *Included property*. The term *included property* means property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Generally, this refers to property whose value is reported on an estate tax return, but it also refers to property whose value otherwise is included in the total value of the gross estate (for example, during examination by the IRS) so that a final value is or will be determined for that property under chapter 11. However, solely for purposes of this section, included property does not refer to unreported property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate as finally determined for Federal estate tax purposes.

(5) *Allowable credits*. The term *allowable credits* includes any credit against the estate tax liability allowable by any section of the Code or by reason of any treaty obligation of the United States, provided the estate qualifies for and properly claims the credit by complying with all applicable rules for claiming the credit. For instance, the prorated unified credit under section 2102(b)(3) is an allowable credit for qualifying estates if the estate files all necessary forms or statements required by the IRS to claim that credit.

(6) *United States dollars*. The term *United States dollars* means the official currency of the United States. The term United States dollars includes physical bills and coins for which the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills and coins typically do not have a value equal to their face value.

(e) *Examples*. The following examples illustrate the application of this section. In each case, the decedent D was a citizen of the United States, the estate does not elect the alternate valuation method under section 2032, and an estate tax liability is payable after the application of all allowable credits.

(1) *Example 1*—(i) *Final value determined by value on estate tax return*. At D's death, D owned (among other assets) a private residence not subject to any debt. D's sole beneficiary is D's child C. The value of the residence is reported on the estate tax return at $300,000. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of D's residence is $300,000, and therefore, C's initial basis in the residence is $300,000. See paragraphs (a)(2) and (b)(1)(i) of this section.

(ii) *Adjustment of initial basis pursuant to other Code provisions*. Several years later, C adds a master suite to the private residence at a cost of $45,000. Pursuant to section 1016(a), C's basis in the residence is increased by $45,000 to $345,000. Subsequently, C sells the residence to an unrelated third party for $450,000. C claims a basis in the residence of $345,000 and reports a gain of $105,000 ($450,000 less $345,000). C has complied with the consistent basis requirement, and C's adjustment to C's initial basis does not violate the consistent basis requirement. See paragraphs (a)(1) and (2) of this section.

(2) *Example 2*—(i) *Final value determined on examination*. The facts are the same as in paragraph (e)(1)(i) of this section (*Example 1*) except that, on examination, the IRS adjusts the value of the residence to $290,000 and that value is not contested before the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of the residence is $290,000, and therefore, C's initial basis in the residence, before taking into account C's subsequent renovations, is $290,000. See paragraphs (a)(2) and (b)(1)(ii) of this section.

(ii) *Reported value if no final value yet determined and reliance on Statement required under §1.6035-1*. Prior to the determination of final value, C sells the residence for $375,000. C reports a gain of $75,000 on C's income tax return, relying on the reported value in a Statement required under §1.6035-1 and claiming an initial basis of $300,000. C has complied with the consistent basis requirement because C did not claim an initial basis in the residence in excess of its reported value before the final value was determined. However, because C claimed an initial basis in the residence that exceeds the final value, C may have an income tax deficiency and underpayment for the year of the sale if the applicable period of limitations on assessment for C's income tax return has not expired when the final value is determined. See paragraphs (b)(2)(i) and (ii) of this section.

(3) *Example 3*—(i) *Final value determined by agreement*. At D's death, D owned 50% of Partnership P, whose sole asset was a rental building with a fair market value of $10 million subject to non-recourse debt of $2 million. D's sole beneficiary is D's child C. The value of D's interest in Partnership P is reported on the estate tax return at $4 million (50% of ($10 million less $2 million)). On examination, the IRS timely adjusts the value of the partnership interest to $5.25 million and the executor of D's estate timely contests that value before the period of limitations on assessment of estate tax expires. Subsequently, the IRS and the executor of D's estate enter into a settlement agreement that provides that the value of D's interest in Partnership P for purposes of the estate tax is $4.5 million. For purposes of the consistent basis requirement applicable to C, the final value of the partnership interest is $4.5 million, and therefore, C's initial basis in the partnership interest is $4.5 million. See paragraphs (a)(2) and (b)(1)(iii) of this section.

(ii) *Adjustment of initial basis pursuant to other Code provisions*. C's share of Partnership P's liabilities at the date of D's death is $1 million. Under section 742 of the Internal Revenue Code and §1.742-1 of this part, C's basis in the partnership interest is $5.5 million ($4.5 million initial basis plus C's $1 million share of Partnership P's debt). C later sells the partnership interest for $5 million at a time when C's basis has not changed and C's share of the debt remains $1 million. Under section 752(d), C's amount realized on the sale includes $1 million for the reduction in C's share of partnership liabilities. Therefore, C's total amount realized is $6 million. C reports taxable gain of $0.5 million ($6 million amount realized less $5.5 million basis). C has complied with the consistent basis requirement because C did not claim an initial basis in the partnership interest that exceeds the final value of the interest, as determined under paragraph (b)(1) of this section, and C's adjustment of the initial basis in the partnership interest as reported does not violate the consistent basis requirement. See paragraphs (a)(1) and (2) of this section.

(4) *Example 4*—(i) *Final value determined by court decision*. At D's death, D owned (among other assets) a rental property. D's sole beneficiary is D's child C. The value of the rental property is reported on the estate tax return at $1 million. On examination, the IRS determines the value of the rental property to be $1.5 million. A court subsequently determines that the fair market value of the rental property for purposes of the estate tax is $1.3 million and the court's decision becomes final. For purposes of the consistent basis requirement, the final value of the rental property is $1.3 million, and therefore, C's initial basis is $1.3 million. See paragraphs (a)(2) and (b)(1)(iv) of this section.

(ii) *Reliance on Statement required under §1.6035-1 and duration of consistent basis requirement*. After the estate tax return is filed and before the final value is determined, C receives a Statement required under §1.6035-1 showing a reported value of $1 million for the rental property. C claims a depreciation deduction on the first income tax return C files after acquiring the property, relying on the reported value in the Statement required under §1.6035-1. C has complied with the consistent basis requirement on that return because C did not claim an initial basis in the rental property in excess of its reported value before the final value was determined. C may claim a credit or refund of income tax that may result from the increased depreciation deduction based on the final value of the rental property, but only if the period of limitations for a claim for a credit or refund of income tax for that year has not expired. C must use the final value of $1.3 million to determine C's unadjusted basis in the rental property for all open taxable years. In this case and pursuant to section 1016(a)(2), C's adjusted basis is determined by reducing the rental property's final value of $1.3 million by the greater of the depreciation deductions allowed or allowable based on the final value of $1.3 million for all prior tax years (open and closed). See paragraphs (a)(3), (b)(2)(i) and (ii) of this section.

(5) *Example 5—Final value for property subject to debt*. At D's death, D's gross estate includes a yacht valued at $750,000, subject to $150,000 non-recourse debt. D's sole beneficiary is D's child C. Pursuant to the rule in §20.2053-7 of this chapter, the executor of D's estate reports the $600,000 net value of the yacht on the estate tax return ($750,000 less $150,000 debt) and claims no other deduction for the debt. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of the yacht is $750,000, and therefore, C's initial basis in the yacht is $750,000. See paragraph (b)(3) of this section.

(6) *Example 6—Included property subject to the consistent basis requirement*. After exercising due diligence to discover estate assets, the executor of D's estate reports the value of all known property includible in D's gross estate on a timely filed estate tax return and pays the estate tax liability. During examination of the return, the IRS becomes aware of a piece of artwork in the possession of D's child C, the value of which is includible in D's gross estate but is not reported on the estate tax return. The value of the artwork for Federal estate tax purposes is $500,000. Pursuant to the examination, the IRS includes the value of the artwork in the value of D's gross estate, which causes an increase in D's estate tax liability. Neither the inclusion of the artwork in D's gross estate nor the value at which the artwork is included in D's estate is contested by the executor of D's estate before the period of limitation on assessment of estate tax expires. The artwork is subject to the consistent basis requirement and the final value of the artwork is $500,000. Therefore, C's initial basis in the artwork is $500,000. See paragraphs (a)(2) and (c)(1)(i) of this section.

(7) *Example 7*—(i) *Partially deductible property subject to the consistent basis requirement*. Pursuant to a bequest in D's will, Trust is established and funded with certain property, the value of which is includible in the gross estate under section 2031. Trust is a charitable remainder annuity trust described in section 664(d)(1). Trust provides that, in each taxable year during the lifetime of D's surviving child C, the trustee must pay to C an annuity of 5% of the initial net fair market value of all property passing to Trust as finally determined for Federal estate tax purposes. Upon the death of C, the trustee must distribute all of the then principal and income of Trust to organizations described in sections 170(c), 2055(a), and 2522(a) of the Code as the trustee selects, in the trustee's sole discretion. Although the executor of D's estate properly claims an estate tax charitable deduction under section 2055(e)(2)(A) for the value of the remainder interest in Trust, D's estate has an estate tax liability after application of all allowable credits. The property passing to Trust is subject to the consistent basis requirement because the value of the property is included in D's gross estate, an estate tax liability is payable after the application of all allowable credits, and the property is not described in paragraph (c)(2) of this section (in particular, the property is not wholly deductible property within the meaning of paragraph (c)(2)(xi) of this section).

(ii) *Wholly deductible property not subject to the consistent basis requirement*. The facts are the same as in paragraph (e)(7)(i) of this section (*Example 7*), except that the sole annuity beneficiary of Trust is D's surviving spouse S, and the executor of D's estate properly claims a deduction under section 2056(b)(8) for the value of S's annuity interest. Because the value of D's entire interest in the property passing to Trust qualified for either a charitable deduction under section 2055(e)(2) or a marital deduction under section 2056(b)(8), none of the property passing to Trust will be subject to the consistent basis requirement. See paragraph (c)(2)(xi) of this section.

(iii) *Property not wholly deductible property if the sum of marital and charitable deductions allowed for that property is less than the value of the decedent's entire interest in the property*. At the time of D's death, D owned 80 shares of voting stock in a closely-held corporation that has 100 shares of voting stock outstanding. D's will directed the executor of D's estate to distribute 40 shares

of D's stock to a marital trust and 40 shares of D's stock to a charitable trust. D's executor included the value of D's 80 shares of stock in D's gross estate at $8,000,000 for purposes of the estate tax. Because of discounts applicable in valuing each of the two blocks of only 40 shares of the stock, D's executor correctly claimed a charitable deduction under section 2055(e)(2) of only $3,000,000, and correctly claimed a marital deduction under section 2056(b)(7) of only $3,000,000. D's executor determined that an estate tax was due on D's estate after the application of all allowable credits. The IRS accepted the return as filed and the period of limitations on assessment of estate tax expired. The 40 shares of stock owned by charitable trust and the 40 shares of stock owned by marital trust are not wholly deductible property within the meaning of paragraph (c)(2)(xi) of this section and are subject to the consistent basis requirement.

(f) *Applicability date*. This section applies to property described in paragraph (c)(1) of this section that is acquired from a decedent or by reason of the death of a decedent if the decedent's Federal estate tax return is filed after September 17, 2024.

Par. 6. Add §1.6035-0 to read as follows:

§1.6035-0 Table of contents.

This section lists the captions contained in §§1.6035-1 and 1.6035-2.

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§1.6035-2 Transitional relief.

(a) Statements due before June 30, 2016.
(b) Applicability date.

Par. 7. Revise §1.6305-1 to read as follows:

§1.6035-1 Basis information to persons acquiring property from decedent.

(a) *Overview*. This section implements the reporting requirements under section 6035 of the Internal Revenue Code (Code) applicable to executors and certain trustees. In general, the reporting requirements of this section require providing information to the IRS on the identity of persons acquiring property from a decedent and providing basis information to persons acquiring that property from the decedent. Basis information is needed by certain persons acquiring property from a decedent in order to comply with the consistent basis requirement of section 1014(f) of the Code. *See* §1.1014-10 for rules applicable to the consistent basis requirement.

(b) *Applicability of section 6035 reporting requirements*—(1) *In general*. The reporting requirements under section 6035 of the Code apply only in the case of an estate in which the executor is required to file an estate tax return under section 6018 of the Code (determined without regard to §20.2010-2(a)(1) of this chapter) (*required estate tax return*) and the executor files that return after July 31, 2015. The requirements do not apply in the case of an estate whose required estate tax return is filed on or before July 31, 2015, even if the due date of the return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015. Whether an estate tax return is a required estate tax return depends on the relevant factors identified in section 6018 and the corresponding regulations, including the date of death value of property includible in the decedent's gross estate, the amount of adjusted taxable gifts, and the applicable filing threshold. An election under section 2032 or 2032A of the Code to determine the value of the gross estate in accordance with those respective provisions is not relevant to whether an executor is required to file an estate tax return under section 6018. If an estate tax return is not required to be filed under section 6018 based on the relevant factors identified in section 6018, then an estate tax return filed for another purpose (such as to make a portability election under section 2010(c)(5) of the Code, an allocation or election under section 2632 of the Code with regard to a decedent's generation-skipping transfer tax exemption, or a protective filing to avoid a penalty or satisfy a State law requirement) is not a required estate tax return for purposes of this section.

(2) *Executor(s) subject to section 6035 reporting requirements*. For purposes of this section, the term *executor* has the same meaning as in section 2203 of the Code, as expanded to include all persons required under section 6018(b) to file an estate tax return. Thus, more than one person may be subject to the reporting requirements for the same decedent's estate. If one executor is unable to file a complete estate tax return (for example, if the executor has insufficient information about property in

the decedent's gross estate that is not in the possession of that executor), each person required to file a return is subject to the reporting requirements of this section only with regard to the property reported (or required to be reported) on the estate tax return required to be filed by that person. Similarly, if no executor is appointed by a court, each person in actual or constructive possession of any property of the decedent is an executor for purposes of this section and is subject to the reporting requirements of this section, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that executor under section 6018(b).

(3) *Examples*. The following examples, in which the decedent D was a United States citizen at the time of the decedent's death, illustrates the application of this paragraph (b).

(i) *Example 1—Executor required to file a return under section 6018*. The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c). On the timely-filed estate tax return, D's executor makes a valid alternate valuation election under section 2032 to value the property of D's gross estate as of a date subsequent to the date of death. As a result, the value of property includible in D's gross estate is decreased to a value that is less than the basic exclusion amount in effect for the year of D's death. Because D's executor is required to file an estate tax return under section 6018, D's executor also is subject to the reporting requirements of section 6035. This is true even though no estate tax liability was incurred, and the requirements of section 1014(f) do not apply to any property includible in D's gross estate. *See* §1.1014-10(c)(1).

(ii) *Example 2—Executor not required to file a return under section 6018*. The value at death of property includible in D's gross estate does not exceed the basic exclusion amount in effect for the year of D's death under section 2010(c) of the Code. In accordance with the terms of D's will, D's executor distributes D's entire estate to D's only child. D's executor files an estate tax return solely for the purpose of making a portability election under section 2010(c)(5). Because D's executor is not required to file an estate tax return under section 6018, D's executor is not subject to the reporting requirements of section 6035.

(iii) *Example 3—No executor appointed*. The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c) and consists entirely of D's interests in Property A and Property B that D owned with Nephew A and Nephew B, respectively, as joint tenants with rights of survivorship. Pursuant to local law, Nephew A becomes the sole owner of Property A and Nephew B becomes the sole owner of Property B upon D's death. No executor or administrator is appointed, qualified, or acting within the United States for D's estate on the due date of D's estate tax return. Because Nephew A has actual or constructive possession of Property A, Nephew A is an executor described in paragraph (b)(2) of this section with regard to D's interest in Property A. Because Nephew A is required to file an estate tax return under section 6018 with regard to D's interest in Property A, Nephew A also is subject to the reporting requirements of section 6035 with respect to Property A. Similarly, because Nephew B has actual or constructive possession of Property B on the due date of D's estate tax return, Nephew B is an executor described in paragraph (b)(2) of this section with regard to D's interest in Property B. Because Nephew B is required to file an estate tax return under section 6018 with regard to D's interest in Property B, Nephew B also is subject to the reporting requirements of section 6035 with respect to Property B.

(iv) *Example 4—Executor unable to make a complete return*. The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c). E is appointed the executor of D's estate. During the administration of D's estate, E discovers that D has made transfers each year for the past ten years to T as trustee of Trust. E contacts T, but T refuses to provide E with any information regarding Trust. E timely files D's estate tax return reporting the value of all of the property in D's gross estate except Trust. Pursuant to §20.6018-2 of this chapter, E includes with the return a statement that gives T's name and contact information and the date and amount of each transfer from D to T as trustee of Trust, which is all the information E has about Trust. The IRS provides notice to T of T's obligation to make D's estate return as to Trust. Because E is required to file an estate tax return under section 6018, E is subject to the reporting requirements of section 6035 as to the property reported on the estate tax return filed by E. Because T is required to file an estate tax return under section 6018, T is subject to the reporting requirements of section 6035 as to Trust.

(c) *Required Information Return and Statement*(*s*)—(1) *Required Information Return*. An executor required to file an estate tax return under section 6018 must file with the IRS an Information Return by the date required under paragraph (c)(3) of this section. The term *Information Return* refers to the Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and all required attachments. Required attachments include a copy of each Statement described in paragraph (c)(2) of this section (if any) required to be furnished to a beneficiary who acquires property within the meaning of paragraph (c)(4) of this section on or before the due date of the estate tax return or, if earlier, the date on which the estate tax return is filed with the IRS. Required attachments also include a copy of each Statement (if any) furnished pursuant to paragraph (c)(5) of this section before the filing of the Information Return. The term *Information Return* also refers to any successor form or procedure designated by the IRS for this purpose. The Information Return must identify each beneficiary who has acquired or will acquire property subject to reporting (under paragraph (e) of this section), as well as other information prescribed by the Information Return and the instructions for that form. For the duty to supplement the Information Return in the event such property is acquired by a beneficiary after the filing of the estate tax return, see paragraph (c)(3)(ii) of this section. For the duty to supplement the Information Return in the event of a change to the information required to be reported, see paragraph (d) of this section.

(2) *Required Statement*(*s*). An executor required to file an estate tax return under section 6018 also must furnish a Statement to each beneficiary who acquires property subject to reporting under paragraph (e) of this section. For purposes of this section, the term *Statement* refers to the payee statement described as Schedule A of the Information Return to be furnished to a beneficiary, or any successor form, schedule, or procedure designated by the IRS for this purpose. The Statement furnished to a beneficiary must identify that beneficiary's acquired property and its value and other information prescribed by the Statement and the instructions for that form. For each property reported on a Statement, the value the executor reports on that Statement is the value of the property as reported on the estate tax return filed with the IRS. Generally, this is the value of the property on the date of the decedent's death, except in the case of an election in which the value is determined under section 2032 or 2032A, in which case it is the value determined under the applicable provision. If different interests in the same property pass from the decedent to one or more income beneficiaries or life tenants and remaindermen, the value to be reported is the value of the entire property and each recipient will be responsible for identifying his or her respective share of uniform basis. For the duty to supplement the Statement in the event of a change to the information required to be reported, including a change in the identified value

of property reported on a Statement, see paragraph (d) of this section.

(3) *Due dates*—(i) *General rule*. Except as provided in paragraphs (c)(3)(ii) and (iii) of this section and in §1.6035-2, the executor must file the Information Return with the IRS on or before the due date specified in this paragraph (c)(3)(i). In addition, each Statement, a copy of which is required to be attached to the Information Return, must be furnished to the named beneficiary on or before this same due date. The Information Return must be filed, and each such Statement (if any) must be furnished to its named beneficiary, on or before the earlier of—

(A) The date that is 30 days after the due date of the estate tax return required under section 6018 (including extensions, if any); or

(B) The date that is 30 days after the date on which that estate tax return is filed with the IRS.

(ii) *Due date and applicable rules if property is acquired subsequently by beneficiary*. If a beneficiary acquires property subject to reporting after the due date of the estate tax return (or the earlier filing of the Information Return), the executor must furnish a Statement to that beneficiary with regard to that acquired property on or before January 31 of the year following the beneficiary's acquisition of that property. By that same January 31, the executor also must attach a copy of the Statement to a supplement to the Information Return (a supplemental Information Return) and must file the supplemental Information Return with the IRS. The supplemental Information Return must include a copy of each Statement required to be furnished for that year pursuant to this paragraph (c)(3)(ii), as well as a copy of each Statement (if any) furnished in accordance with paragraph (c)(5) of this section that has not already been filed with the IRS as an attachment to the Information Return or a supplement to the Information Return. The requirements of this paragraph (c)(3)(ii) do not apply if the property already has been reported on a Statement furnished pursuant to paragraph (c)(5) of this section. See this paragraph (c)(3) and paragraph (d)(4) of this section for the due date of other required supplements to this reporting.

(iii) *Transition rule*. If the due date of an estate tax return required to be filed by section 6018 is on or before July 31, 2015, but the executor does not file the estate tax return with the IRS until after July 31, 2015, then the Information Return and all required Statements are due on or before the date that is 30 days after the date on which the estate tax return is filed, except as provided in §1.6035-2.

(4) *Acquiring an interest in property*. For purposes of this section, the term *acquired property* refers to property subject to reporting under paragraph (e) of this section that a beneficiary acquires. A beneficiary acquires such property when, under local law, title vests in the beneficiary or when the beneficiary otherwise has sufficient control over or connection with the property that the beneficiary is able to take action related to the property for which basis is relevant for Federal income tax purposes (such as, for example, to sell or depreciate the property). In many cases, a beneficiary's acquisition of property occurs upon an executor's or trustee's distribution of the property. For property passing by contract or by operation of law, the beneficiary's acquisition of that property generally occurs automatically upon the death of the decedent.

(5) *Option to furnish Statement(s) prior to the acquisition of property by a beneficiary*. An executor may satisfy the requirement in paragraph (c)(2) of this section to furnish a Statement to a beneficiary by furnishing the Statement to the beneficiary prior to the beneficiary's acquisition of the property subject to reporting under paragraph (e) of this section, provided that the executor has reason to believe that the beneficiary will acquire that property. The Statement furnished to such a beneficiary must identify the property the beneficiary is expected to acquire as well as the value of that property and other information prescribed by the Statement and the instructions for that form (and must include information relating to other property actually acquired by such beneficiary as may be required under paragraph (c)(2) of this section). If, after satisfying the requirements of this paragraph (c)(5), the property is acquired by a different beneficiary, the executor must update the beneficiary information in the Information Return and furnish a Statement to that beneficiary pursuant to the duty to supplement to report a change in beneficiary information as described in paragraph (d)(2)(i) of this section. The executor additionally is subject to the duty to supplement to report other changes to the information required to be reported as identified in paragraph (d) of this section.

(6) *Example*. The following example illustrates the application of this paragraph (c).

(i) The decedent D was a United States citizen at the time of D's death and the executor of D's estate E is required to file an estate tax return under section 6018. The terms of D's will provide for D's entire estate to be distributed to a marital trust. Prior to timely filing the estate tax return for D's estate, E funded the marital trust with a portion of the property, the value of which is included in D's gross estate. Under paragraph (c)(4) of this section, the marital trust has acquired this property upon the funding of the trust by E. Under paragraphs (c)(1) and (c)(3)(i) of this section, within 30 days of filing the estate tax return, E must file with the IRS the Information Return identifying the marital trust as the beneficiary (as well as other information prescribed by the Information Return or instructions) and must include with the Information Return all required attachments. Under paragraphs (c)(2) and (c)(3)(i) of this section, by the same date, E must furnish to the marital trust the Statement identifying the portion of the property distributed to the marital trust and its estate tax value (as well as any other information prescribed by the Statement or instructions). A copy of the Statement is a required attachment to be included with the Information Return. Pursuant to paragraph (c)(5) of this section, E may choose to expand the property identified on the Statement to also include the property the marital trust is expected to acquire subsequently. If E so chooses, the Statement to be furnished to the marital trust will identify all such property and its value at the date of death and, except in the case of any changes to the information required to be reported, no further Statement will be required at the time of the completion of the funding of the trust.

(ii) However, if E chooses not to expand the reporting to property not yet

acquired by the marital trust, then, once the marital trust has acquired additional property, E is subject to further reporting. Under paragraph (c)(3)(ii) of this section, in each year that E distributes additional property to the marital trust, E must furnish, by January 31 of the following year, a Statement to the marital trust identifying all of the property the marital trust has acquired from D's estate that year and the property's estate tax value (as well as any other information prescribed by the Statement or instructions). By the same date, E must file with the IRS a supplemental Information Return and attach a copy of that Statement as well as any other required attachments.

(d) *Duty to supplement*—(1) *Duty to supplement to report changes to the information reported on the Information Return or Statement*(*s*). An executor to whom the reporting requirements of this section apply must file a supplemental Information Return with the IRS and furnish a Statement or supplemental Statement to each affected beneficiary if a change to the information required to be reported on the Information Return or Statement (or supplement to either) causes the information as reported to be incorrect or incomplete. The executor must file the supplemental Information Return with the IRS, including copies of each Statement or supplemental Statement furnished to affected beneficiaries, and must furnish a Statement or supplemental Statement to each affected beneficiary, by the due date described in paragraph (d)(4) of this section.

(2) *Changes requiring supplement*. This paragraph (d)(2) provides a nonexhaustive list of changes that require supplemental reporting under paragraph (d)(1) of this section.

(i) *Change in beneficiary information*. The receipt, discovery, or acquisition by the executor of information that changes the beneficiary to whom property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise), or corrects or completes other beneficiary information originally reported, will give rise to a duty to supplement.

(ii) *Change in the identified value of property*. The supplementing of an estate tax return to report a corrected estate tax value of property that was previously reported on an estate tax return and a Statement will give rise to a duty to supplement. In addition, a final determination of value of property for Federal estate tax purposes (within the meaning of §1.1014-10(b)(1)) that differs from the value provided on a Statement or supplement to a Statement will give rise to a duty to supplement.

(iii) *Change or addition of property subject to reporting*. The supplementing of an estate tax return to report the estate tax value of property subject to reporting under paragraph (e) of this section, if that property and/or its value previously was not reported on an estate tax return or supplement to the estate tax return, will give rise to a duty to supplement. A duty to supplement also will arise if such property or its value that previously was not reported on an estate tax return or supplement to the estate tax return is included in the decedent's gross estate pursuant to an examination by the IRS or otherwise.

(iv) *Change in property to be acquired by beneficiary*. A duty to supplement will arise if an executor furnishes a Statement to a beneficiary prior to the beneficiary's acquisition of property pursuant to paragraph (c)(5) of this section and the beneficiary ultimately acquires property different from the property identified on that Statement. A beneficiary's acquisition of different property may occur for any reason, including an executor's receipt of different property in a transaction in which the basis of the new property received by the executor is determined, in whole or in part, by reference to the final value of property acquired from or as a result of the death of the decedent (for example, as the result of a like-kind exchange under section 1031 or an involuntary conversion).

(3) *Exceptions*; *no duty to supplement despite certain changes*. Notwithstanding paragraph (d)(2) of this section, no supplemental reporting under this section is required for:

(i) Inconsequential errors or omissions within the meaning of §301.6722-1(b) of this chapter;

(ii) Changes resulting from an event that triggers an additional estate tax under section 2032A, including changes in value in the event of a beneficiary election under section 1016(c) of the Code;

(iii) Adjustments to the basis of property pursuant to sections of the Code other than section 1014(f); and

(iv) Any other change that is identified as requiring no supplemental reporting under this section in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2)(ii)(*b*) of this chapter).

(4) *Due date of supplemental reporting*. The supplemental reporting required by this paragraph (d) must be filed with the IRS and furnished to each affected beneficiary on or before 30 days after the date on which information becomes available to the executor from which the executor can conclude that a change to the information provided on the Information Return or Statement (or supplement to either) requires supplemental reporting. For changes occurring as a result of supplementing the estate tax return, the date on which the information becomes available to the executor is deemed to be the filing date of the supplemental information. Therefore, for changes occurring as a result of supplementing the estate tax return, the due date of the supplemental reporting required by this paragraph (d) is 30 days after the filing date of the supplemental information. For changes occurring as a result of a determination of final value, the date on which the information becomes available to the executor is deemed to be the date a value becomes the final value under §1.1014-10(b)(1). Therefore, for changes occurring as a result of a determination of final value, the due date of the supplemental reporting required by this paragraph (d) is 30 days after the date a value becomes the final value under §1.1014-10(b)(1). However, with regard to property that has not been acquired by a beneficiary on or before the due date described in this paragraph (d)(4) and for which a Statement was not provided to the beneficiary pursuant to paragraph (c)(5) of this section, the due date may be delayed until the due date described in paragraph (c)(3)(ii) of this section.

(5) *Duration of duty to supplement*. An executor's duty to supplement as described in this section continues to apply until a final determination of value for Federal estate tax purposes (a final value within the meaning of §1.1014-10(b)(1)) is determined for all property subject to report-

ing (under paragraph (e) of this section) or, if later, until such property has been acquired by a beneficiary. Therefore, the executor's final supplemental reporting is the reporting to the IRS and the furnishing of Statements to beneficiaries with regard to the last to occur of these two events, assuming that either event would create a change requiring supplemental reporting.

(6) *Examples*. The following examples illustrate the application of this paragraph (d). In each case, the decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return.

(i) *Example 1—Change in identified value of property*. D's estate includes stock in a closely-held corporation. E distributes the stock to a beneficiary B of the estate before the due date of the estate tax return. D's executor reports the value of the stock at $14 million on D's estate tax return and on the Statement furnished to B. On examination of D's estate tax return, the IRS adjusts the value of the closely-held stock to $18 million. A court subsequently determines that the fair market value of the closely-held stock for Federal estate tax purposes is $17 million and the court's decision becomes final on June 15th. On or before July 15th of the same year, E must furnish a supplemental Statement to B showing the final value of $17 million for the closely-held stock, and must attach a copy of that supplemental Statement to a supplemental Information Return and file it with the IRS.

(ii) *Example 2—Duration of the duty to supplement*. D's gross estate includes stock in closely-held corporation X, stock in closely-held corporation Y, and cash. D's will directs E to distribute 50% of the value of D's estate to A and 50% to B in any manner to which A and B agree. A and B agree that A will take the stock in corporation X and B will take stock in corporation Y and they will divide the cash in such amounts as to cause each to take an equal share of the value D's estate. E timely files D's estate tax return and furnishes a Statement to A and to B pursuant to paragraph (c)(5) of this section. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. Thereafter, A and B agree to revise their agreement. E distributes the stock in corporation X to B and the stock in corporation Y to A in accordance with a revised agreement between A and B. E's final supplemental reporting is the filing of a supplemental Information Return and furnishing of a supplemental Statement to A describing the shares and value of stock distributed to A and a supplemental Statement to B describing the shares and value of stock distributed to B.

(e) *Property for which reporting is required*—(1) *In general*. Except for excepted property subject to only limited reporting as described in paragraph (f) of this section, the property subject to reporting under this section is *included property* and any other property the basis of which is determined, in whole or in part, by reference to the basis of the included property (for example, property acquired in a like-kind exchange or an involuntary conversion). For purposes of this section, *included property* is property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Generally, included property refers to property whose value is reported on an estate tax return, but it also refers to property whose value otherwise is included in the total value of the gross estate (for example, during examination by the IRS). Thus, included property includes property that qualified, in whole or in part, for an estate tax marital deduction under section 2056, 2056A, or 2106(a)(3) or for an estate tax charitable deduction under section 2055 or 2106(a)(2). It further includes property included in the decedent's gross estate that is distributed to a surviving spouse in satisfaction of that surviving spouse's interest in community property not included in the gross estate that the executor has distributed to a non-spouse pursuant to State law properly applied. However, included property does not include property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate, such as the property of a deceased nonresident noncitizen that is not subject to United States estate tax, and the surviving spouse's share of community property described in section 1014(b)(6).

(2) *Examples*. The following examples illustrate the application of this paragraph (e). In each case, the decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return.

(i) *Example 1—Included property*. Pursuant to the terms of D's will, a trust is established and funded with property, the value of which is includible in D's gross estate under section 2031. The trust is a charitable remainder annuity trust described in section 664(d)(1). The terms of the trust provide that, in each taxable year during the lifetime of D's surviving spouse S, the trustee must pay to S an annuity of 5% of the initial net fair market value of all property passing to the trust as finally determined for Federal estate tax purposes. Upon the death of S, the trustee must distribute all of the then-principal and income of the trust to organizations described in sections 170(c), 2055(a) and 2522(a) as the trustee selects, in the trustee's sole discretion. The property used to fund the trust is included property and is subject to the reporting requirements of this section. This is true whether or not the requirements of section 1014(f) apply to the property transferred to the trust. *See* §1.1014-10(d)(4).

(ii) *Example 2—Property the basis of which is determined by reference to the basis of included property*. D's gross estate includes the value of Property A. Before the due date for filing the estate tax return, E exchanges Property A for Property B in a like-kind exchange pursuant to section 1031, for which D's estate recognizes no gain or loss. Property B is property subject to reporting as prescribed in this section. With respect to Property B, the value E reports on the Statement is the value reported for Property A on the estate tax return filed with the IRS.

(f) *Excepted property requiring only limited reporting*—(1) *Excepted property*. Certain included property that is described in paragraph (f)(2) of this section (excepted property) is subject to more limited reporting than the reporting required under paragraph (c) of this section. The requirement to file an Information Return with the IRS as described in paragraph (c)(1) of this section remains the same even if all property subject to reporting under paragraph (e) of this section is excepted property. However, the executor is not required to identify or provide any other information for excepted property on the Information Return, and the executor is not required to furnish a Statement to the beneficiary with regard to that property. Instead, the executor is required only to report on the Information Return, in accordance with the instructions for that form, that some or all of the property subject to reporting is excepted property described in this paragraph (f). Further, the executor is not required to identify or provide any other information for excepted property on any Statement furnished to a beneficiary and, if this property is the only property that a beneficiary has acquired, an executor is not required to furnish a Statement to that beneficiary.

(2) *List of excepted property*. Excepted property includes—

(i) United States dollars (as defined in paragraph (f)(3) of this section).

(ii) United States dollar-denominated demand deposits.

(iii) Certificates of deposit denominated in United States dollars.

(iv) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit).

(v) Shares of a registered investment company priced in United States dollars

that is a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2a).

(vi) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars.

(vii) Federal, State, and local tax refunds and other refunds payable in United States dollars.

(viii) Notes that are forgiven in full by the decedent upon the decedent's death, whether or not denominated in United States dollars.

(ix) Household and personal effects for which an appraisal is not required under §20.2031-6(b) of this chapter.

(x) Property that, prior to distribution from the estate or the decedent's revocable trust, is completely sold, exchanged, or otherwise disposed of in one or more transactions that are recognition events for Federal income tax purposes (whether or not resulting in a gain or loss, and whether or not any gain is capital or ordinary). Such property includes, but is not limited to—

(A) Property distributed in satisfaction of a pecuniary bequest on which the estate recognizes any gain or loss pursuant to §1.661(a)-2(f);

(B) Property for which an election under section 643(e)(3) has been made for the estate to recognize any gain or loss;

(C) Interests in a business entity that are redeemed for United States dollars prior to being distributed to the beneficiary;

(D) Property disposed of in a transaction described in section 267(a) and (b)(13); and

(E) Property subject to the mark to market accounting method at the time of distribution from the estate or from the decedent's revocable trust.

(xi) Other property having an initial basis that is not in any way determined with regard to or derived from the property's fair market value for Federal estate tax purposes. For purposes of this section, such property includes but is not limited to—

(A) Annuity contracts subject to section 72 and amounts received as an annuity subject to section 72;

(B) An interest in property that consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691;

(C) Amounts received under installment obligations arising from a transaction for which the installment method for determining gain under section 453 applies;

(D) Appreciated property described in section 1014(e) that is acquired by the decedent within 1 year of death;

(E) Stock of a passive foreign investment company subject to section 1296(i), but only if the basis of such stock is the adjusted basis in the hands of the decedent immediately before the decedent's death; and

(F) Interests in and distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, that are expressed entirely in United States dollars.

(xii) Bonds to the extent that they are redeemed by the issuer for United States dollars prior to being distributed to a beneficiary so that any resulting gain or loss is recognized by the estate.

(xiii) Property included in the gross estate of a beneficiary who died before the due date of the Information Return.

(xiv) Any other property that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2)(ii)(*b*) of this chapter).

(3) *United States dollars defined*. For purposes of this paragraph (f), the term *United States dollars* means the official currency of the United States. The term United States dollars includes physical bills and coins for which the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills or coins typically do not have a value equal to their face value.

(4) *Examples*. The following examples illustrate the application of this paragraph (f). In each case, the decedent D was a U.S. citizen and D's executor E is required under section 6018 to file an estate tax return.

(i) *Example 1—Reporting household and personal effects*. Included in D's gross estate are D's household and personal effects. The only item included in D's household and personal effects with a value in excess of $3,000 is a painting. E attaches to D's estate tax return an appraisal of the painting prepared in accordance with §20.2031-6(b) of this chapter and a room-by-room itemization of D's other household and personal effects prepared in accordance with §20.2031-6(a) of this chapter. E must furnish to the beneficiary of the painting the Statement required by paragraph (c)(2) of this section. E is not required to report on a Statement furnished to any beneficiary any information about D's other household and personal effects. If a beneficiary of D's household effects, other than the beneficiary of the painting, has acquired no other property, E is not required to furnish a Statement to that beneficiary. E is required to file the Information Return required by section (c)(1) of this section and attach to that Information Return a copy of the Statement furnished to the beneficiary of the painting. E must disclose on the Information Return that some or all of the property included in D's gross estate is excepted property described in this paragraph (f).

(ii) *Example 2—Reporting if property is disposed of in taxable transaction*. Included in D's estate are shares in X, a publicly traded company. Shortly after D's death but prior to the filing of the estate tax return for D's estate, X is acquired by T, also a publicly traded company. In exchange for the shares in X, the estate receives shares in T and cash in a fully taxable transaction. E is required to report on the Information Return required by paragraph (c)(1) of this section that some or all of the property included in D's gross estate is excepted property described in this paragraph (f). E is not required to furnish a Statement to any recipient with respect to the cash, X stock, or T stock.

(iii) *Example 3—Reporting if estate is liquidated prior to distribution*. Property A is the only property in D's estate. Prior to filing the estate tax return for D's estate, E sells Property A for $15,000,000. D's estate recognizes gain on the sale of Property A for income tax purposes. E distributes the $15,000,000 among the beneficiaries of D's estate. E must file the Information Return required by paragraph (c)(1) of this section even though all of the property included in D's gross estate is excepted property within the meaning of this paragraph (f). E is not required to furnish to the beneficiaries of D's estate a Statement with regard to Property A, and therefore is not required to attach a copy of any Statement to the Information Return. E is required to file an Information Return with the IRS indicating that all of the property included in D's gross estate is excepted property described in this paragraph (f), and must provide other information as required by the Information Return and the instructions.

(g) *Beneficiaries*—(1) *In general*. Each person who acquires (or will acquire) property from a decedent or by reason of the decedent's death that is subject to the reporting described in paragraph (e) of this section is a beneficiary for purposes of this section and thus is a person to be listed on the Information Return and, except with respect to excepted property (described

in paragraph (f) of this section), is a person to whom the executor must furnish a required Statement. Thus, a beneficiary may be:

(i) An individual, including one who is both the executor and a beneficiary, who acquires (or will acquire) property subject to reporting not in trust;

(ii) The estate of a deceased individual who survived the decedent if such individual or estate acquires (or will acquire) property subject to reporting not in trust;

(iii) A trust, whether foreign or domestic, including without limitation a grantor retained annuity trust, charitable remainder trust, and charitable lead trust (each referred to in this section as *beneficiary trusts*); or

(iv) An entity other than a trust, including without limitation a business entity or an organization described in section 501(c).

(2) *Required Statement to beneficiary trust*—(i) *In general*. If a beneficiary trust is the beneficiary to be identified on the Information Return pursuant to paragraph (g)(1) of this section, the executor must furnish the Statement described in paragraph (c)(2) of this section to the trustee rather than to the beneficiaries of the trust. However, if the executor reasonably believes that it is unlikely that the beneficiary trust will depreciate, sell, or otherwise dispose of the property subject to reporting in a recognition event for income tax purposes but instead will distribute the property in kind to the trust beneficiaries, the executor instead may furnish the Statement described in paragraph (c)(2) of this section to each of the trust beneficiaries, with copies of the Statements to the trustee. For this purpose, the trust beneficiaries include all potential current income beneficiaries and each remainderman who would have had a current interest in the trust if one or more of the income beneficiaries had died immediately after the decedent. For purposes of determining the due date of such Statements, each trust beneficiary will be deemed to have acquired the trust property when the trust acquired that property.

(ii) *Beneficiary trust not yet established*. If, by the date required for filing the Information Return with the IRS, a beneficiary trust does not have at least one trustee and a tax identification number, an executor must report on the Information Return that the beneficiary trust has not yet been established in accordance with the instructions. Once the beneficiary trust has been established and the trust information becomes available to the executor, the executor must supplement the required reporting as described in paragraph (d) of this section to update the beneficiary information on the Information Return and Statement.

(3) *Required Statement to the holder of a split interest in property*, *not in trust*. The beneficiary of a life estate not in trust, and thus the beneficiary to whom the executor is to furnish any required Statement, is the life tenant. Similarly, the beneficiary of a remainder interest not in trust is each remainderman identified as if the life tenant were to die immediately after the decedent. For purposes of determining the due date of the Statements reporting these interests under paragraph (c)(3) of this section, each beneficiary will be deemed to have acquired the property subject to reporting on the date of the decedent's death. The beneficiary of a contingent interest, not in trust, is a beneficiary only if the contingency occurs before the end of the period during which the executor has an obligation to supplement the reporting as provided in paragraph (d)(5) of this section. If the contingency occurs during this period, the executor must update the beneficiary information on the Information Return and furnish a Statement to that beneficiary pursuant to the executor's duty to supplement to report a change in beneficiary information as described in paragraph (d) of this section. Usufruct interests are treated in the same manner.

(4) *Reporting for a missing beneficiary*. If the executor is unable to locate a beneficiary by the date required for filing the Information Return with the IRS, the executor must report on the Information Return the failure to locate the beneficiary and the efforts the executor has made to locate the beneficiary. The executor must supplement the Information Return and must furnish the required Statement, as provided in paragraph (d) of this section, to report the subsequent location of the beneficiary or, if the beneficiary is not located, to report the distribution of the property subject to reporting to a different beneficiary.

(h) *Reporting requirements applicable to trustees*—(1) *Circumstances under which trustees of beneficiary trusts and other trusts are subject to reporting*. Trustees of beneficiary trusts making a distribution of property that was reported on a Statement furnished to those trustees, or of any other property the basis of which is determined, in whole or in part, by reference to the basis of property subject to reporting under paragraph (e) of this section, are subject to the reporting requirements described in paragraph (h)(2) of this section and the supplemental reporting requirements described in paragraph (d) of this section (to the extent applicable) with respect to such property. In addition, trustees of trusts that receive a distribution of such property, whether from a beneficiary trust or from any other trust that has received such property, either directly or indirectly, also are subject to these reporting requirements when making a distribution of that property. This reporting obligation imposed on trustees continues to apply for each subsequent transfer or distribution until the property is distributed to a beneficiary not in trust. However, no trustee of a beneficiary trust or of a subsequent recipient trust is subject to the reporting requirements described in paragraph (h)(2) of this section for a disposition of property in a transaction that is a recognition event for income tax purposes (whether or not resulting in a gain or loss) that results in the entire property having a basis that no longer is related, in whole or in part, to the property's final value or, if applicable, reported value (within the meaning of §1.1014-10(b)(1) or (2), respectively).

(2) *Required reporting*. On or before January 31 of the calendar year immediately following the year during which occurs a distribution of property subject to reporting under this paragraph (h), the trustee making the distribution must file an Information Return in accordance with the instructions for that form and must furnish a Statement to each recipient of the distribution. For purposes of this section, each recipient is a beneficiary.

(3) *Example*. The following example illustrates the application of this paragraph (h). Decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return. Pursuant to the will of D, E distributed 100 shares of publicly traded stock in Company X to a trust (Children's Trust) for the benefit of D's two children A and B and their respective issue. E provided a Statement to the trustee of Children's Trust in accordance with the requirements of paragraph (c)(2) of this section. Shortly thereafter, pursuant to the terms of Children's Trust, Children's Trust terminates with the 100 shares of Company X stock being distributed in equal shares between Trust A, for the benefit of A and A's issue, and Trust B, for the benefit of B and B's issue. Pursuant to paragraph (h)(2) of this section, the trustee of Children's Trust files an Information Return with the IRS and furnishes a Statement to the trustees of Trust A and Trust B. Several years later, the trustee of Trust A distributes its 50 shares of Company X stock to C, the only child of A. Pursuant to this paragraph (h), the trustee of Trust A files an Information Return with the IRS and furnishes a Statement to C. Shortly thereafter, C gives the 50 shares of Company X stock, outright, to C's nephew N. C has no obligation to file an Information Return with the IRS or furnish a Statement to N to report the distribution of the 50 shares of Company X stock to N.

(i) *Penalties*. For the penalties applicable to the filing of Information Returns and the furnishing of Statements required by this section, including waivers for reasonable cause, *see* sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724.

(j) *Applicability date*. This section applies to executors of the estate of a decedent who are required to file a Federal estate tax return under section 6018 if that return is filed after September 17, 2024, and to trustees receiving certain property included in the gross estate of such a decedent.

Par. 8. Section 1.6662-9 is added to read as follows:

§1.6662-9 Inconsistent estate basis reporting.

(a) *In general*. Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax required to be shown on an income tax return that is attributable to an inconsistent estate basis.

(b) *Inconsistent estate basis*—(1) *In general*. There is an *inconsistent estate basis* in property under section 6662(k) to the extent that a taxpayer claims a basis that was determined by using an initial basis as defined in §1.1014-10(a)(2) that exceeds the property's final value as determined under §1.1014-10(b)(1). The property to which this section applies is the property described in §1.1014-10(c)(1).

(2) *Example*. The following example illustrates the provisions of paragraph (b)(1) of this section. In year 1, taxpayer (T), a citizen of the United States, inherited a house, property described in §1.1014-10(c)(1) and not described in §1.1014-10(c)(2). The final value and thus initial basis of the house as determined under §1.1014-10(b) was $300,000. In year 5, T spent $85,000 on an addition to the house, which is added to T's initial basis in the house under section 1016(a). In year 11, T sold the house to an unrelated third party for $650,000. On T's return, T claims an initial basis of $400,000 and the $85,000 spent on the addition to the house, for a total claimed basis of $485,000. T's claimed initial basis exceeds the allowable basis by $100,000. Because this amount is due to T claiming an initial basis as defined in §1.1014-10(a)(2) that exceeds the property's final value as determined under §1.1014-10(b), T is liable for the 20% accuracy-related penalty for the portion of any underpayment that is attributable to the reporting of an inconsistent basis.

(c) *Applicability date*. This section applies to property described in §1.1014-10(c)(1) that is reported on an estate tax return required under section 6018 that is filed after September 17, 2024.

PART 301--PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 301.6721-1 is amended by revising paragraph (h)(2)(xii) and paragraph (j) to read as follows:

§301.6721-1 Failure to file correct information returns.

* * * * *

(h) * * *

(2) * * *

(xii) Section 6035 (relating to basis information with respect to property acquired from a decedent, generally Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*), whether an initial or supplemental information return.

* * * * *

(j) *Applicability dates*—(1) *In general*. Except as provided in paragraph (j)(2) of this section, this section applies with respect to information returns required to be filed on or after January 1, 2024. *See* 26 CFR 301.6721-1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(2) *Exception*. Paragraph (h)(2)(xii) of this section applies with respect to information returns required to be filed after September 17, 2024.

Par. 11. Section 301.6722-1 is amended by revising paragraph (e)(2)(xxxv) and paragraph (g) to read as follows:

§301.6722-1 Failure to furnish correct payee statements.

* * * * *

(e) * * *

(2) * * *

(xxxv) Section 6035 (relating to basis information with respect to property acquired from a decedent, generally Schedule A of Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*), other than an information return described in section 6724(d)(1)(D), whether an initial or supplemental payee statement;

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies with respect to payee statements required to be furnished on or after January 1, 2024. *See* 26 CFR 301.6722-1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(2) *Exception*. Paragraph (e)(2)(xxxv) of this section applies with respect to payee statements required to be furnished after September 17, 2024.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: August 16, 2024

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

(Filed by the Office of the Federal Register September 16, 2024, 8:45 a.m., and published in the issue of the Federal Register for September 17, 2024, 89 FR 76356)

Part III

Relief from Certain Additions to Tax for Corporation's Underpayment of Estimated Income Tax under Section 6655

Notice 2024-66

SECTION 1. OVERVIEW

This notice provides relief from the addition to tax under § 6655 of the Internal Revenue Code (Code)[1] for underpayment of estimated income tax by a corporation to the extent the amount of any underpayment is attributable to the corporation's corporate alternative minimum tax (CAMT) liability under § 55, as amended by § 10101 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). This notice also incorporates the relief provided in Notice 2024-33, 2024-18 I.R.B. 959, and Notice 2024-47, 2024-27 I.R.B. 1, and obsoletes those notices.

SECTION 2. SCOPE

The relief provided in this notice applies for the purpose of calculating any installment of estimated income tax of a corporate taxpayer with respect to a taxable year that begins after December 31, 2023, and before January 1, 2025 (Covered CAMT Year). This notice waives any addition to tax under § 6655 with respect to a corporation's CAMT liability under § 55 for any Covered CAMT Year.

SECTION 3. BACKGROUND

.01 *CAMT under the IRA*. Section 10101 of the IRA amended § 55 to impose the CAMT based on the "adjusted financial statement income" (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. Pursuant to § 59(k)(1), in general, a corporation is an applicable corporation subject to the CAMT for a taxable year if it meets an average annual AFSI test for one or more taxable years that (i) are before that taxable year and (ii) end after December 31, 2021 (Applicable Corporation). Section 55(a) provides that, for the taxable year of an Applicable Corporation, the amount of CAMT imposed by § 55 equals the excess (if any) of (i) the tentative minimum tax for the taxable year, over (ii) the sum of the regular tax, as defined in § 55(c), for the taxable year plus the tax imposed under § 59A. Section 55(b)(2)(A) provides that, in the case of an Applicable Corporation, the tentative minimum tax for the taxable year is the excess of (i) 15 percent of AFSI for the taxable year (as determined under § 56A), over (ii) the CAMT foreign tax credit for the taxable year (as determined under § 59(l)). In the case of any corporation that is not an Applicable Corporation, § 55(b)(2)(B) provides that the tentative minimum tax for the taxable year is zero.

Notice 2023-7, 2023-3 I.R.B. 390, announced that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue forthcoming proposed regulations addressing the application of the CAMT. Notice 2023-7 also provided interim guidance intended to clarify the application of certain aspects of the CAMT. Notice 2023-20, 2023-10 I.R.B. 523, Notice 2023-64, 2023-40 I.R.B. 974, and Notice 2024-10, 2024-3 I.R.B. 406, provided additional interim guidance that is intended to further clarify the application of the CAMT. Taxpayers may generally rely on the interim guidance provided in the aforementioned notices for any taxable year that begins before January 1, 2024, and any taxable year that begins on or after January 1, 2024, and ends on or before the date proposed regulations addressing the application of the CAMT are published in the *Federal Register*. Special reliance rules are provided in section 5 of Notice 2024-10 for the interim guidance provided in that notice.

.02 *Estimated Taxes*. Section 6655(a) imposes an addition to tax for failure by a corporation to make a sufficient and timely payment of estimated income tax. Section 6655(c) and (d)(1)(A) generally provide that, in the case of a corporation, estimated income tax is required to be paid in four installments and the amount of any required installment is 25 percent of the required annual payment. Generally, under § 6655(d)(1)(B), the required annual payment is the lesser of two amounts described in § 6655(d)(1)(B)(i) and (ii). The amount described in § 6655(d)(1)(B)(i) is 100 percent of the tax shown on the return for the taxable year. The amount described in § 6655(d)(1)(B)(ii) is 100 percent of the tax shown on the taxpayer's return for the preceding taxable year, so long as the preceding taxable year was a full twelve months long and the return for such year showed a liability for tax. However, pursuant to § 6655(d)(2), in the case of a large corporation (as defined under § 6655(g)(2)), the amount described in § 6655(d)(1)(B)(ii) may not be used to reduce the amount of an installment payment other than the first installment payment for the taxable year. In special circumstances, other rules specified in § 6655 or elsewhere may also apply.

On June 7, 2023, the Treasury Department and the IRS issued Notice 2023-42, 2023-26 I.R.B. 1085, which provided a waiver of the addition to tax under § 6655 with respect to a corporation's CAMT liability under § 55 for any taxable year that begins after December 31, 2022, and before January 1, 2024.

On April 15, 2024, the Treasury Department and the IRS issued Notice 2024-33, 2024-18 I.R.B. 959, which provided a limited waiver of the addition to tax under § 6655 to the extent the amount of any underpayment is attributable to a portion of a corporation's CAMT liability. The relief provided in Notice 2024-33 applied only for the purpose of calculating the installment of estimated tax by a corporate taxpayer that was due on or before April 15, 2024, or May 15, 2024 (in the

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

case of a fiscal year taxpayer with a taxable year beginning in February 2024), with respect to a taxable year that began in 2024.

On June 13, 2024, the Treasury Department and the IRS issued Notice 2024-47, 2024-27 I.R.B. 1, which extended the relief provided in Notice 2024-33. Under Notice 2024-47, the limited waiver of the addition to tax under § 6655 provided by Notice 2024-33 was extended to apply for the purpose of calculating any installment of estimated tax by a corporate taxpayer that was due on or before August 15, 2024, with respect to a taxable year that began in 2024.

SECTION 4. LIMITED WAIVER OF ADDITION TO TAX

.01 *Waiver*. In light of the continuing challenges associated with determining whether a corporation is an Applicable Corporation and the amount of a corporation's CAMT liability under § 55 for a Covered CAMT Year, and in the interest of sound tax administration, the IRS will waive the addition to tax under § 6655 with respect to a corporation's CAMT liability under § 55 for any Covered CAMT Year. Accordingly, for a Covered CAMT Year, a corporation's required installments of estimated tax need not include amounts attributable to its CAMT liability under § 55 to prevent the imposition of an addition to tax under § 6655. If a corporation fails to timely pay its CAMT liability under § 55 when due, other sections of the Code may apply; for example, additions to tax could be imposed under § 6651 if payment of the CAMT liability is not made by the due date (without regard to any extension) of the corporation's return.

.02 *Instructions to be modified*. The instructions to Form 2220, *Underpayment of Estimated Tax by Corporations*, will be modified, as necessary, to clarify that no addition to tax will be imposed under § 6655 based on a corporation's failure to make an estimated tax payment of its CAMT liability under § 55 for any Covered CAMT Year, and that a taxpayer may exclude such amounts when calculating the amount of its required annual payment on Form 2220. If necessary, the modified instructions will be posted on *https://www.irs.gov*.

.03 *Instructions to avoid penalty notice*. Affected taxpayers must file Form 2220 with their Federal income tax return, even if they owe no estimated tax penalty. The Form 2220 must be completed without including the CAMT liability from Schedule J of Form 1120, *U.S. Corporation Income Tax Return* (or other appropriate line of the corporation's income tax return in the Form 1120 series). Affected taxpayers must also include an amount of estimated tax penalty on Line 34 of their Form 1120 (or other appropriate line of the corporation's income tax return in the Form 1120 series), even if that amount is zero. Failure to follow these instructions could result in affected taxpayers receiving a penalty notice that will require an abatement request to apply the relief provided by this notice.

SECTION 5. APPLICABILITY DATE

The waiver of the addition to tax imposed by § 6655 described in section 4.01 of this notice applies for any Covered CAMT Year.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 2024-33 and Notice 2024-47 are obsoleted.

SECTION 7. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Alexander Wu of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in its development. For further information, please contact Alexander Wu at (202) 317-6845 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Tribal General Welfare Benefits

REG-106851-21

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations regarding the exclusion from gross income of certain Tribal general welfare benefits. The proposed regulations address the requirements that would apply to determine whether the benefits that an Indian Tribal government program provides qualify as Tribal general welfare benefits. These proposed regulations would affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally-recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants. This document also requests comments on certain provisions and provides a notice of a public hearing on the proposed regulations that will be in addition to Tribal consultation on the proposed regulations.

DATES: *Comments:* Electronic or written comments on this proposed rule from the public must be received by December 16, 2024.

Public Hearing: The public hearing is scheduled to be held on January 13, 2025, at 10 a.m. Eastern time (ET). Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 16, 2024. If no outlines are received by December 16, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025. Requests for special assistance during the hearing must be received by 5 p.m. ET on January 8, 2025. See the Comments and Public Hearing section of the **SUPPLEMENTARY INFORMATION** for additional information.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-106851-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments to the IRS's public docket. Send paper submissions to: CC:PA:PR:01 (REG-106851-21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Dunlap of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317-4718 (not a toll-free number); concerning submissions of comments or outlines, the hearing, or any questions to attend the hearing by teleconferencing, Publication and Regulations Section at (202) 317-6901 (not a toll-free number) or preferably by email to publichearings@irs.gov. If emailing, please include the following information in the subject line: Attend, Testify, or Question and REG-106851-21.

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 139E of the Internal Revenue Code (Code). Section 139E(c)(3) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to, "in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2014), establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs." The proposed regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

Background

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement section 139E of the Internal Revenue Code (Code).

Section 61 of the Code provides that, except as otherwise provided by law, the term "gross income" means all income from whatever source derived. The term "income" is broadly defined as "instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). As a general rule, exclusions from income are construed narrowly, and taxpayers must bring themselves within the clear scope of the exclusion for the exclusion to apply. *Commissioner v. Schleier*, 515 U.S. 323, 328-329 (1995). Tribal members are subject to the same requirement to pay Federal income taxes as non-Tribal members, unless exempted by a treaty or agreement between the United States and the Tribal member's Tribe or an Act of Congress dealing with Indian affairs. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956).

Generally, if the provision of a benefit satisfies the requirements of section 139E (discussed in part IV of this Background), section 139E will apply to exclude the value of the benefit from the recipient's gross income. If section 139E does not apply to exclude a benefit from a recipient's gross income, the benefit may, depending on the facts and circumstances, separately qualify for exclusion from the recipient's gross income under another Code provision or the administrative general welfare exclusion (discussed in part I of this Background), which pre-dates the enactment of section 139E. *See* Notice 2015-34 (2015-18 I.R.B. 942), discussed in part V of this Background.

I. *Administrative General Welfare Exclusion*

The IRS generally has determined that payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in an individual recipient's Federal gross income; this concept is referred to in this preamble as the "administrative general welfare exclusion." *See*, *e.g.*, Rev. Rul. 78-170, 1978-1 C.B. 24 (concluding that amounts paid under the laws of the State of Ohio to low-income elderly and disabled persons to help alleviate their cost of winter energy consumption are made for the promotion of general welfare, and are not includible in the recipients' gross income for Federal income tax purposes); *see also* Rev. Rul. 76-395, 1976-2 C.B. 16 (applying the general welfare exclusion to home rehabilitation grants to low-income families to correct substandard conditions).

To qualify under the administrative general welfare exclusion, payments must (1) be paid from a governmental fund, (2) be for the promotion of the general welfare (that is, based on the need of the individual or family receiving such payments), and (3) not represent compensation for services absent a specific Federal income tax exclusion. *See* Notice 2023-56, 2023-38 I.R.B. 824.

Payments that are based on some criteria other than individual or family need do not qualify for the administrative general welfare exclusion. *Compare* Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants received by low-income homeowners residing in a defined area of a city under the city's community development program funded under the Housing and Community Development Act of 1974 are in the nature of general welfare and are not includible in their gross income) *with* Rev. Rul. 76-131, 1976-1 C.B. 16 (payments made by the State of Alaska to individuals at least 65 years of age who have maintained an Alaska domicile for at least 25 years to encourage them to continue their residence in the State did not qualify under the general welfare exclusion because the payments were made to residents regardless of financial status, health, educational background, or employment status).

The administrative general welfare exclusion does not generally apply to permit a business to exclude payments from gross income because such payments are not based on individual or family need. *See Bailey v. Commissioner*, 88 T.C. 1293, 1300-1301 (1987), *acq*. 1989-2 C.B. 1; Revenue Ruling 2005-46 (2005-2 C.B. 120).

II. *Application of the Administrative General Welfare Exclusion to Indian Tribal Governments*

Indian Tribal governments have a unique legal status. They have sovereignty that pre-dates the United States and therefore have a government-to-government relationship with the United States. Indian Tribal governments have developed a broad range of programs to address their unique social, cultural, and economic issues. The administrative general welfare exclusion applies to benefits provided by Indian Tribal governments no less favorably than it applies to benefits provided by Federal, State, or local governments. Thus, benefits provided by Indian Tribal governments qualify for the administrative general welfare exclusion if the benefits are (1) made pursuant to a governmental program of the Tribe; (2) for the promotion of general welfare (that is, based on individual or family need); and (3) not compensation for services.

III. *Revenue Procedure 2014-35*

In 2014, the Treasury Department and the IRS issued Revenue Procedure 2014-35 (2014-26 I.R.B. 1110),[1] which provides safe harbors under which the IRS conclusively presumes that the individual need requirement of the administrative general welfare exclusion is met for benefits provided under Indian Tribal governmental programs that meet the safe harbor requirements. The revenue procedure provides that the IRS will not assert that recipients of benefits under a safe harbor must include the value of those benefits in gross income or that the benefits are subject to the information reporting requirements of section 6041 of the Code. The safe harbors apply if the following requirements are met: (1) the benefit is provided pursuant to a specific Indian Tribal government program, (2) the program has written guidelines specifying how the individual qualifies for the benefit; (3) the benefit is available to any Tribal member and certain other individuals who satisfy the program's guidelines; (4) the program does not discriminate in favor of members of the governing body; (5) the benefit is not lavish or extravagant under the circumstances, and (6) the benefit is not compensation for services. *See* section 5.02(1) of Revenue Procedure 2014-35. Categories of qualifying benefits include housing, education, elder and disabled person care, and cultural activities. *See* section 5.02(2) of Revenue Procedure 2014-35. In addition, nominal cash honoraria and items of cultural significance that are not lavish or extravagant provided to religious or spiritual officials or leaders in connection with their participation in cultural, religious, and social events, are not treated as compensation for services (and therefore are not gross income) under the revenue procedure. *See* section 5.03 of Revenue Procedure 2014-35.

IV. *The Tribal General Welfare Exclusion Act of 2014*

On August 2, 2013, H.R. 3043, 113th Cong. (2013), whose short title was the Tribal General Welfare Exclusion Act of 2013, was introduced in the United States House of Representatives and referred to the Committee on Ways and Means. On that same date, an identical bill was introduced in the United States Senate and referred to the Committee on Finance. On September 16, 2014, after its short title was revised to the "Tribal General Welfare Exclusion Act of 2014," H.R. 3043 was passed by the House of Representatives after a floor debate (House Debate). *See* Cong. Rec. H7599-7603 (September 16, 2014). On September 17, 2014, after being received by the Senate, H.R.3043 was the

[1] Revenue Procedure 2014-35 was preceded by Notice 2012-75 (2012-51 I.R.B. 715). The IRS received over 40 comments in response to Notice 2012-75, which informed the drafting of Revenue Procedure 2014-35.

subject of a colloquy (Senate Colloquy). *See* Cong. Rec. S5686-5687 (September 17, 2014). On September 18, 2024, H.R. 3043 was passed by the Senate by unanimous consent. *See* Cong. Rec. S5862 (September 18, 2014). On September 26, 2014, the President of the United States approved the United States Congress's enactment of the Tribal General Welfare Exclusion Act of 2014 (Act), Public Law 113-168, 128 Stat. 1883 (2014).

The Act, among other things, amended the Code by adding section 139E. Under section 139E, gross income does not include the value of any "Indian general welfare benefit," which this notice of proposed rulemaking refers to as a "Tribal General Welfare Benefit." Section 139E(b) defines a Tribal general welfare benefit as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to an Indian Tribal government program, but only if: (1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Tribe, and (2) the benefits provided under such program are (A) available to any Tribal member who meets such guidelines, (B) for the promotion of general welfare, (C) not lavish or extravagant, and (D) not compensation for services. Further, section 139E(c)(5) provides that any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture "shall not be treated as compensation for services."

Section 2(c) of the Act provides that ambiguities in section 139E are to be resolved in favor of Indian Tribal governments. Section 2(c) of the Act also requires that deference be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

Section 2(d)(1) of the Act provides that section 139E shall apply to taxable years for which the period of limitation on refund or credit under section 6511 of the Code of 1986 has not expired. Section 2(d)(2) of the Act provides that if the period of limitation on a credit or refund resulting from the enactment of section 139E expires before the end of the 1–year period beginning on the date of the enactment of the Act, refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1–year period.

Section 3 of the Act requires the Secretary of the Treasury to establish a Tribal Advisory Committee. The Department of the Treasury Tribal Advisory Committee (TTAC) held its inaugural meeting on June 20, 2019. Under section 3(b) of the Act, the TTAC's mandate is to advise the Secretary of the Treasury on matters relating to the taxation of Indians, and the Secretary of the Treasury is required to consult with the TTAC to establish and require training and education for internal revenue field agents who administer and enforce internal revenue laws. This includes (A) training and education with respect to Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made by the Act.

Section 4(a) of the Act requires the Secretary of the Treasury to temporarily suspend "all audits and examinations of Indian Tribal governments and members of Tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion" until the training and education described above is completed. Section 4(a) further provides that the period of limitation under section 6501 of the Code is suspended during the period of suspension.

V. *Notice 2015-34*

Following the addition of section 139E to the Code, the IRS published Notice 2015-34 (2015-18 I.R.B. 942), providing guidance to taxpayers regarding the effect of section 139E on Revenue Procedure 2014-35. Notice 2015-34 provides that section 139E codifies (but does not supplant) the administrative general welfare exclusion for certain benefits provided under Indian Tribal government programs. Notice 2015-34 provides that taxpayers can rely on Revenue Procedure 2014-35 for the safe harbors under which certain benefits provided by Indian Tribal government programs may be excluded from gross income under the administrative general welfare exclusion. Additionally, Notice 2015-34 requested comments on (1) what guidelines may be helpful to Indian Tribal governments to determine whether benefits are lavish or extravagant under section 139E(b); (2) what Tribal customs or government practices may establish an Indian Tribal government program administered through specific guidelines under section 139E(b)(1) and (c)(4) and how such programs may be identified; and (3) how items of cultural significance, cash honoraria, and cultural or ceremonial activities for the transmission of Tribal culture under section 139E(c)(5) should be defined.

VI. *TTAC Report and Tribal Consultations on Section 139E*

Members of the TTAC formed a Subcommittee on the Act's General Welfare Exclusion (GWE Subcommittee) in 2019 to provide the TTAC with technical expertise on recommendations for the implementation of the Act. On June 16, 2021, the GWE Subcommittee submitted to the TTAC a report (TTAC Report) containing the GWE Subcommittee's interpretation of the core principles underlying section 139E, and an Appendix containing draft proposed regulations interpreting section 139E (TTAC draft proposed regulations), consistent with those core principles. On October 26, 2022, the TTAC formally recommended and approved the TTAC Report to be submitted for the record and published for Tribal comment.

The Treasury Department sent a Tribal consultation letter, dated October 27, 2022 (Dear Tribal Leader Letter), to Tribal leaders to request consultation on the Act and the TTAC Report. The Dear Tribal Leader Letter announced consultation meetings to be held on December 14, 15, and 16, 2022 (December 2022 Consultations), to discuss the Act and the TTAC Report. The Dear Tribal Leader Letter also requested responses to certain questions related to

the interpretation of particular provisions of section 139E, as well as comments on the TTAC Report. In response to the Dear Tribal Leader Letter, and after the December 2022 Consultations, the Treasury Department received 65 written comments from Tribes and two Tribal organizations (collectively, Tribal Comments).

The Tribal Comments were broadly supportive of the recommendations in the TTAC Report,[2] including the TTAC draft proposed regulations. In general, the Tribal Comments emphasized that the Act, particularly section 2(c) of the Act, requires the Treasury Department to recognize the sovereignty of Tribes by granting broad deference to Indian Tribal governments in the design and implementation of their general welfare programs, as well as with respect to any ambiguities in the statute. Deference to Indian Tribal governments was a guiding principle in the Tribal Comments addressing each of the questions for which the Treasury Department requested comment. For example, many Tribal Comments stated that any Treasury Department and IRS guidance imposing specific requirements for a general welfare program, such as what constitutes "the promotion of the general welfare," what is a "lavish or extravagant" benefit, or what are "cultural or ceremonial activities," would infringe upon Indian Tribal sovereignty. Many Tribal Comments urged that section 2(c) of the Act be expressly cited in the proposed regulations.

Another area of significant concern raised in the Tribal Comments was ensuring that the regulations under section 139E do not presumptively treat benefits as outside the scope of section 139E solely because the benefits are provided to all eligible recipients in an equal amount, or that the benefits are funded from gaming revenues. This concern was primarily raised in relation to amounts that are set aside and paid from net gaming revenues to provide for the general welfare of the Indian Tribe and its members. *See* 25 U.S.C. 2710(b).

Finally, the Tribal Comments addressed various other issues, including the effective date of the proposed regulations, training of IRS agents, and coordination with other Federal agencies. After considering these and other Tribal Comments and the TTAC Report, and after consultation with the TTAC and the GWE Subcommittee, the Treasury Department and the IRS propose to adopt new §1.139E-1 to provide guidance under section 139E (proposed §1.139E-1). The following Explanation of Provisions discusses the Tribal Comments in more detail in relation to each proposed provision in proposed §1.139E-1.

Explanation of Provisions

The proposed regulations would provide that the gross income of a Tribal program participant does not include the value of any Tribal general welfare benefit provided by an Indian Tribal government program.

The provisions of proposed §1.139E-1 would provide (1) definitions of terms used in section 139E and proposed §1.139E-1 (*see* proposed §1.139E-1(b)); (2) requirements for a program to qualify as an "Indian Tribal Government Program" (*see* proposed §1.139E-1(c)); (3) requirements for a benefit to qualify as a "Tribal General Welfare Benefit" (*see* proposed §1.139E-1(d)); (4) special rules related to cultural or ceremonial activities (*see* proposed §1.139E-1(e)); (5) clarification of the audit suspension required by section 4(a) of the Act (proposed §1.139E-1(f)); and (6) the proposed date of applicability of the final regulations (*see* proposed §1.139E-1(g)). The Treasury Department and the IRS will publish final regulations under section 139E after consideration of oral and written comments received in connection with Tribal consultation on these proposed regulations, consideration of any other comments received in response to the proposed regulations, and further consultation with the TTAC, including through the GWE Subcommittee.

I. *Section 139E Definitions*

Section 139E(a) provides that gross income does not include the value of any Tribal general welfare benefit. Section 139E(b) defines a Tribal general welfare benefit, in relevant part, as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to a program that is established by an Indian Tribal government and that satisfies specified requirements. Proposed §1.139E-1(b) would define an Indian Tribal government, a Tribe, and the individuals, including a Tribal member, spouse, and dependent, who may be determined by the Indian Tribal government to be eligible for a general welfare benefit under section 139E.

A. *Definition of Indian Tribal government*

Section 139E(c)(1) provides that the term "Indian Tribal government" includes any agencies or instrumentalities of an Indian Tribal government and any Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) (Alaska Native Corporations). Revenue Procedure 2014-35 provides that the term "Indian Tribal government" has the same meaning as in section 7701(a)(40)(A) but for purposes of the revenue procedure includes agencies or instrumentalities of the Indian Tribal government. The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of Indian Tribal government and did not specifically address Alaska Native Corporations.

If used in a provision of the Code and not otherwise distinctly expressed or manifestly incompatible with the intent thereof, section 7701(a)(40)(A) defines the term "Indian Tribal government" to mean the governing body of any Tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions. Under the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, 108 Stat. 4791 (List Act), the Secretary of the Interior is required to publish annually a list of all Federally-recognized Tribes. In Revenue Procedure 2008-55 (2008-39 I.R.B. 768), after consultation with the Department of Interior (DOI), the Trea-

[2] However, a few Tribal Comments argued that Congress has not specifically directed the Treasury Department and the IRS to publish regulations under section 139E.

sury Department and the IRS determined that the Indian Tribal entities that appear on the current or future lists of Federally-recognized Tribes published annually under the List Act by the DOI, Bureau of Indian Affairs, are designated as Indian Tribal governments for purposes of section 7701(a)(40). See 89 FR 944 (January 8, 2024) for the most current list published by the DOI, Bureau of Indian Affairs.

Proposed §1.139E-1(b)(4) would define the term "Indian Tribal Government" by reference to section 7701(a)(40). In addition, in accordance with section 139E(c)(1), the definition of Indian Tribal government for purposes of proposed §1.139E-1(b)(4) also would include agencies and instrumentalities of the Indian Tribal government. This definition is consistent with Revenue Procedure 2014-35.

Although the definition of Indian Tribal government under section 139E(c)(1) includes Alaska Native Corporations, these proposed regulations would not include Alaska Native Corporations in the definition of Indian Tribal government for purposes of these rules and instead reserve proposed §1.139E-2 for the rules to apply section 139E to benefits provided by Alaska Native Corporations. The Treasury Department and the IRS intend on holding consultation before issuing future guidance on issues related to the application of section 139E to benefits provided by Alaska Native Corporations.

B. *Definition of Tribe*

Section 139E does not define the term "Indian Tribe," but section 4(c)(2) of the Act defines it by cross-reference to that term as defined in section 45A(c)(6) of the Code. Revenue Procedure 2014-35 also defines "Indian Tribe" by cross-reference to section 45A(c)(6). The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of "Indian Tribe," which, for purposes of these proposed regulations, is referred to as simply "Tribe."

Section 45A relates to the Indian employment credit, which was applicable for taxable years prior to January 1, 2022. Section 45A(c)(6) defines "Indian Tribe" to mean any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, ANCSA that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Proposed §1.139E-1(b)(7) generally would define "Tribe" using the definition of Indian Tribe in section 45A(c)(6). However, for ease of readability and to prevent confusion arising from citing to an expired Code provision, the proposed regulations would recite the language of section 45A(c)(6) rather than incorporating the definition by cross-reference. As noted, proposed §1.139E-2 is reserved because the Treasury Department and the IRS intend to issue future guidance under section 139E applicable to benefits provided by Alaska Native Corporations. Accordingly, the proposed regulations would exclude section 45A(c)(6)'s reference to Alaska Native regional and village corporations as defined in and established pursuant to ANCSA for purposes of these rules.

C. *Definition of Tribal program participant*

Section 139E(b) provides that a Tribal general welfare benefit means any payment made or services provided to or on behalf of a member of the Tribe (or any spouse or dependent of such a member) pursuant to a program that satisfies specified requirements. Revenue Procedure 2014-35 allows benefits to be provided to a member of the Tribe, as well as a "qualified nonmember," meaning a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of a Tribe.

The TTAC Report and many Tribal Comments recommend that the proposed regulations provide that individuals eligible for benefits not be limited to Tribal members and their spouses and dependents, instead supporting the use of the more expansive term "qualified nonmember" from Revenue Procedure 2014-35. The TTAC Report and many Tribal Comments state that using this more expansive definition of "qualified nonmember" would be consistent with the House Debate and Senate Colloquy that explain the Act, and that section 139E should be viewed no less favorably than Revenue Procedure 2014-35. Moreover, several Tribal Comments suggest that the language "to or on behalf of" in section 139E(b) is ambiguous and thus supports the proposed regulations adopting the definition of "qualified nonmember" from Revenue Procedure 2014-35. In addition, the TTAC Report explains that depending on Tribal culture, custom, or tradition, a member of a Tribe may have obligations to care for extended family, and that existing Tribal general welfare programs may provide assistance to these extended family members.

The Treasury Department and the IRS have considered the TTAC Report and the Tribal Comments and agree that an expansive definition of eligible individuals is appropriate. Accordingly, proposed §1.139E-1(b)(8) would define the term "Tribal Program Participant" to mean a Tribal member, spouse of a Tribal member (including a spouse of a Tribal member within the meaning of §301.7701-18, or a spouse of a Tribal member under applicable Tribal law), dependent of a Tribal member, or other individual who has been determined by the Indian Tribal government to be eligible for a Tribal general welfare benefit because such individual is, with respect to a Tribal member, an ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner. This definition is intended to encompass the categories of "qualified nonmember" that are covered by Revenue Procedure 2014-35, with the clarification that a spouse may be a spouse under applicable Tribal law.

The Treasury Department and the IRS note that the phrase "on behalf of" in section 139E(b) does not make the section 139E exclusion applicable to the direct recipient of a payment which was made by the Indian Tribal government "on behalf of" the Tribal program participant. For example, a Tribal program participant who receives a Tribal general welfare benefit from an Indian Tribal government program to provide rental assistance can exclude the payment from the Tribal program participant's gross income under section 139E regardless of whether the assistance is paid directly to the Tribal program participant or paid to the land-

lord on behalf of the Tribal program participant. In either case, however, section 139E does not apply to permit the landlord to exclude the rental assistance payment from the landlord's gross income.

D. *Definition of Tribal member*

Section 139E does not define who is a "member of an Indian Tribe" or "Tribal member." Revenue Procedure 2014-35 defines who is a member of a Tribe by cross-reference to 25 CFR 290.2, which defines a member of a Tribe as an individual who meets the requirements established by applicable Tribal law for enrollment in the Tribe and (1) is listed on the Tribal rolls of that Tribe if such rolls are kept, or (2) is recognized as a member by the Tribal governing body if Tribal rolls are not kept. The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of a member of a Tribe.

Proposed §1.139E-1(b)(9) would define the term "Tribal Member" in a manner similar to Revenue Procedure 2014-35's definition of "member of an Indian Tribe." The proposed regulations would adopt the same definition but, for ease of readability, would incorporate the language from 25 CFR 290.2 rather than providing a cross-reference. Thus, the proposed regulations would define "Tribal Member" as an individual who is a member or citizen of the Tribe that establishes or maintains the Indian Tribal government program because the individual meets the requirements established by applicable Tribal law for enrollment in the Tribe and (1) is listed on the Tribal rolls of that Tribe if such rolls are kept, or (2) is recognized as a member by the Tribal governing body if Tribal rolls are not kept. In addition, the Treasury Department and the IRS are aware that some Tribes temporarily close their rolls for enrollment or do not enroll children until they reach a certain age. These Tribes may provide benefits to an individual on the basis that the individual may be eligible for benefits, even though not formally a Tribal member. In particular, Tribes may provide benefits to an Indian child under the Indian Child Welfare Act of 1978, Public Law 95-608, 92 Stat. 3069 (1978), codified at 25 U.S.C. 1903(4). The Indian Child Welfare Act defines "Indian child" as any unmarried person who is under age eighteen and is either (a) a member of a Tribe or (b) is eligible for membership in a Tribe and is the biological child of a member of a Tribe. To ensure that Indian Tribal governments may provide general welfare benefits to an Indian child under section 139E, the proposed regulations also would include in the definition of Tribal member an "Indian child" as defined in 25 U.S.C. 1903.

The Treasury Department and the IRS recognize that an Indian Tribal government generally develops programs with the intention of providing general welfare benefits to or for the benefit of its own Tribal members. The Treasury Department and the IRS interpret section 139E(b) as providing a relationship nexus between the Indian Tribal government providing the general welfare benefit and the individual receiving the benefit. Thus, the proposed regulations would define the term Tribal member to mean a member of the Tribe that establishes or maintains the Indian Tribal government program. However, solely for purposes of the rule in section 139E(c)(5) relating to benefits provided for participation in ceremonial or cultural activities, proposed §1.139E-1(b)(8)(ii) would provide that the recipient of such benefits may be a member of a Tribe that is different from the Tribe that establishes or maintains the program.

E. *Definition of spouse*

Section 139E does not define the term "spouse," nor does Revenue Procedure 2014-35. The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of spouse for purposes of section 139E.

Section 301.7701-18(a) of the Procedure and Administration Regulations (26 CFR part 301) provides that, for Federal tax purposes, the term spouse means an individual lawfully married to another individual. Section 301.7701-18(b) generally provides that a marriage of two individuals is recognized for Federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of domicile. Section 301.7701-18(a) does not specifically refer to a marriage recognized under Tribal law because Tribal lands are not states, possessions or territories of the United States or foreign jurisdictions. However, the term "spouse" would include individuals married under Tribal law if the marriage would be recognized under the laws of any state, possession, or territory of the United States. See also 1 U.S.C. 7.

Because §301.7701-18(a) defines spouse for Federal tax purposes, that definition applies for purposes of section 139E and would apply by default under proposed regulations. However, as noted in part I.C. of this Explanation of Provisions section, the proposed regulations would include in the definition of Tribal program participant the spouse of a Tribal member, as determined under applicable Tribal law, whether or not recognized under §301.7701-18(a) and 1 U.S.C. 7.

F. *Definition of dependent*

Section 139E(c)(2) defines the term "dependent" to mean a dependent as defined in section 152 of the Code, determined without regard to section 152(b)(1), (b)(2), and (d)(1)(B). Revenue Procedure 2014-35 does not define dependent, and the TTAC Report and the Tribal Comments did not provide any recommendations on the definition of dependent for purposes of section 139E.

Section 152(a) defines dependent to mean an individual who is a qualifying child or qualifying relative of the taxpayer. Section 152(b) provides that an individual who is a qualifying child or a qualifying relative of a taxpayer is not a taxpayer's dependent in certain circumstances. Section 152(b)(1) provides that if an individual is a dependent of a taxpayer, that individual is treated as having no dependents. Section 152(b)(2) provides that, to be a dependent of a taxpayer, an individual must not have filed a joint return with his or her spouse. Section 152(d)(1)(B) provides that qualifying relative does not include an individual whose income is not less than the exemption amount set forth in section 151(d) of the Code.[3] For pur-

[3] For taxable years in which the exemption amount is zero, the section 151(d) exemption amount is generally the inflation-adjusted section 152(d)(1)(B) exemption amount in the annual revenue procedure setting forth inflation-adjusted items that is published in the Internal Revenue Bulletin.

poses of section 139E, an individual who for the year is a dependent of a taxpayer who is him or herself a dependent, who files a joint return with the individual's spouse, or whose income is not less than the applicable limit for section 152(d)(1)(B) ($5,050 for 2024) is a dependent of a Tribal member if the other requirements of section 152 are satisfied, pursuant to section 139E(c)(2).

Proposed §1.139E-1(b)(10) would define the term "dependent" in accordance with the definition in section 139E(c)(2). However, for ease of readability, the proposed regulations would not cite the specific Code sections, but instead would describe the rules for determining who is a dependent under section 152 without regard to section 152(b)(1), (b)(2), and (d)(1)(B).

II. *Indian Tribal Government Program*

Under section 139E(b), a benefit is a Tribal general welfare benefit if it meets certain requirements and is provided pursuant to an Indian Tribal government program, but only if the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Tribe. Section 139E(c)(4) provides that a program will not fail to be treated as an Indian Tribal government program solely by reason of the program being established by Tribal custom or government practice. Revenue Procedure 2014-35 provides that, to qualify for the safe harbors provided therein, there must be a specific Tribal program, the program must have written guidelines specifying how an individual qualifies for the benefit, and the program cannot discriminate in favor of members of the governing body.

Some Tribal Comments suggest that programs established by Tribal custom or government practice without written documentation (that is, programs established under oral and unwritten customs or traditions) should satisfy the statutory requirement in section 139E(b)(1) that the program be administered under specified guidelines. These Tribal Comments recommend that the proposed regulations allow Indian Tribal governments to demonstrate the existence of "specified guidelines" for these programs through statements, affidavits, or declarations that describe how the Tribe has operated the program in the past. Other Tribal Comments argue that section 139E(b)(1) neither specifies who establishes the "specified guidelines" nor defines the term "specified," and that the proposed regulations should presume that a program administered by or pursuant to Tribal resolution or other action by a Tribe's governing body is "administered under specified guidelines." The TTAC Report and the Tribal Comments did not specifically address the requirement that the program not discriminate in favor of members of the governing body.

The Treasury Department and the IRS read section 139E(b) as requiring both that a program be established by an Indian Tribal government, and that the program be administered under specified guidelines. This reading is similar to the requirements in Revenue Procedure 2014-35 that there must be a specific Tribal program, and that the program must have guidelines specifying how an individual qualifies for the benefit. Proposed §1.139E-1(c) generally would adopt these two requirements and would explain how an Indian Tribal government program can meet these requirements. The proposed regulations also would address the requirement that the program not discriminate in favor of members of the governing body.

A. *Program must be established*

Proposed §1.139E-1(c)(2) would provide that a program must be established by an Indian Tribal government and that the program may be established by Tribal custom, government practice, or formal action of the Indian Tribal government under applicable Tribal law. The proposed regulations also would provide that to the extent permitted by applicable Tribal law, an Indian Tribal government may delegate authority to establish general welfare programs to a designated individual or entity of the Indian Tribal government.

While an Indian Tribal government may find it helpful to set forth the creation of a program through a written document, the proposed regulations would not specifically require a written document to memorialize the establishment of the program. However, the proposed regulations would refer to applicable Tribal law to determine whether a writing is required for formal actions of the Indian Tribal government. For example, if Tribal law requires all formal actions of the Indian Tribal government to be in writing, then proposed §1.139E-1(c)(2) would also require the establishment of the program to be in writing. If written documentation of the Indian Tribal government program is not required under Tribal law, and the Indian Tribal government does not provide written documentation of the Indian Tribal government program, the use of affidavits or Indian Tribal government declarations, whether oral or written, may be used to substantiate the establishment of the program. For example, the transcript of the minutes of an Indian Tribal government session that describe the creation of the program may be sufficient to establish an Indian Tribal government program under these proposed regulations.

B. *Program must be administered under specified guidelines*

Proposed §1.139E-1(c)(3) would provide the requirements for the administration of the program under specified guidelines. In general, the specified guidelines of the program represent the framework for the program's operations. Thus, the proposed regulations would provide that the specified guidelines of the program must include, at a minimum, a description of the program to provide Tribal general welfare benefits, the benefits provided by the program (including how benefits are determined), the eligibility requirements for the program, and the process for receiving benefits under the program.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E does not require the specified guidelines of the program to be memorialized in a written document. However, Indian Tribal governments are encouraged to set forth the specified guidelines in writing to assist recipients in determining whether a benefit received under the program is excludable from gross income under section 139E. In particular, recipients of Tribal general welfare benefits who are contacted by the IRS will need to substantiate that the benefit is excludable from gross income under section 139E and may not have any

written documentation in their possession to do so. If the Indian Tribal government has documented in writing the specific guidelines of the program, the individual recipient of the benefit may use the written documentation to substantiate that the benefit received is intended to be a Tribal general welfare benefit that is excludable from gross income under section 139E.

C. *Program cannot discriminate in favor of members of the governing body*

In accordance with section 139E(b)(1), proposed §1.139E-1(c)(4) would provide that one of the requirements for an Indian Tribal government program is that the program not discriminate in favor of members of the governing body of the Tribe (non-discrimination requirement). Proposed §1.139E-1(c)(4)(i) would generally define a governing body as the legislative body of the Tribe, such as the Tribal Council, or the representative equivalent of the legislative body of the Tribe. However, the Treasury Department and the IRS are aware that the form and membership of the governing body of a Tribe may vary between Tribes. For example, a Tribe may form its governing body to include all Tribal members, known as a general council Tribe. To ensure that a general council Tribe is not prevented from satisfying this requirement, proposed §1.139E-1(c)(4)(ii) would provide that a program is treated as being in compliance with the non-discrimination requirement if the governing body of the Tribe consists of the entire adult membership of the Tribe.

Proposed §1.139E-1(c)(4)(iii) would provide a facts and circumstances test to determine whether a program, either by its terms or in its administration, discriminates in favor of members of the governing body of the Tribe. For example, the administration of a program would discriminate in favor of members of the governing body if, based on the facts and circumstances, the benefits provided during the taxable year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by members of the governing body would fail to satisfy the non-discrimination requirement.

D. *No limitation on source of funds*

Section 139E does not provide restrictions on how an Indian Tribal government may fund an Indian Tribal government program. Section 2.03 of Revenue Procedure 2014-35 provides that revenues that the Indian Tribal government derives from levies, taxes, service fees, tribally-owned businesses, or other sources are permissible to fund a Tribal general welfare program.

The TTAC Report and the Tribal Comments argue that the source of funds used for general welfare benefits does not matter for compliance with section 139E. The TTAC Report and the Tribal Comments request that the proposed regulations confirm that the source of funding is irrelevant and, in particular, that a Tribe's gaming revenues may be used to fund Tribal general welfare benefits under an Indian Tribal government program.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E does not prohibit an Indian Tribal government from funding a general welfare program with net gaming revenues, or revenues from any other particular source. Thus, proposed §1.139E-1(c)(5) would provide that benefits under the Indian Tribal government program may be funded by any source of revenue or funds, including net gaming revenues. However, an Indian Tribal government is permitted to restrict the source and amount of funds available to provide benefits under an Indian Tribal government program.

E. *Benefits funded by net gaming revenues*

Under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (IGRA), a Federally-recognized Tribe is permitted to engage in gaming activities and provide net gaming revenues to its members. *See* 25 U.S.C. 2710(b). Section 25 CFR 502.16 defines "net gaming revenue" as gross gaming revenues of an "Indian gaming operation" less: (a) amounts paid out as, or paid for, prizes; and (b) total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees. IGRA allows Tribes to use their net gaming revenues consistent with one or more of the following purposes: (1) to fund Tribal government operations or programs; (2) to provide for the general welfare of the Tribe or its members; (3) to promote Tribal economic development; (4) to donate to charitable organizations; or (5) to help fund operations of local government.

IGRA also allows Tribes to use their net gaming revenues to distribute per capita payments. *See* 25 U.S.C. 2710(b)(3). Under 25 CFR 290.2, "per capita payment" means the distribution of money or other thing of value to all members of the Tribe, or to identified groups of members, which is paid directly from the net revenues of any Tribal gaming activity, but does not include payments that have been set aside by a Tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing, or other similar, specifically identified needs.

Under IGRA, a Tribe cannot distribute per capita payments unless it has a Revenue Allocation Plan (RAP) that is approved by the DOI prior to distributing per capita payments. *See* 25 U.S.C. 2710(b)(3) and 25 CFR 290.11. A Tribe does not need a RAP if no per capita payments are made or planned to be made to its members. *See* 25 CFR 290.10. Thus, no RAP is required if a Tribe intends to use its gaming revenues solely for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing, or other similar, specifically identified needs. These types of payments are not per capita payments as defined under IGRA.

Section 25 U.S.C. 2710(b)(3)(D) provides that net revenues may be used to make per capita payments to members of the Tribe only if the per capita payments are subject to Federal taxation and Tribes notify members of such tax liability when payments are made. Under section 6041 and §1.6041-1, the Tribe generally is required to report per capita

payments of $600 or more in any taxable year on Form 1099-MISC, *Miscellaneous Information*.

Section 3402(r)(1) requires every person, including an Indian Tribe, making a payment to a member of an Indian Tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax. A payment that constitutes a per capita payment under IGRA is gross income under section 61 and continues to be subject to withholding under section 3402(r)(1) to the extent not otherwise excepted. *See* 25 U.S.C. 2701-2721 and 25 CFR part 290. These provisions, which are intended to ensure adequate withholding on gross income arising from the distribution of class II and class III gaming activity, are not intended to and do not extend the scope of what is gross income. Thus, withholding under section 3402(r) is not imposed merely by reason of the payment being sourced in class II or class III gaming activities but rather by reason of the payment being gross income and made in the form described in section 3402(r). Accordingly, if a payment is made under an Indian Tribal government program and meets the requirements to qualify as an excludable Tribal general welfare benefit under section 139E and these proposed regulations, then such payment is not subject to the withholding requirements of section 3402(r).

Section 139E does not address IGRA or the Federal tax treatment of per capita payments. Revenue Procedure 2014-35, however, specifically provides that per capita payments are gross income under section 61, and are subject to the information reporting and withholding requirements of sections 6041 and 3402(r). Thus, under the revenue procedure, per capita payments are not excludable from income under the administrative general welfare exclusion.

The TTAC Report argues that a distribution with a general welfare purpose under IGRA should be presumed to be a Tribal general welfare benefit under section 139E and not be treated as a taxable per capita payment under IGRA. In addition, the TTAC Report provides that a Tribe's RAP should be relied upon when determining whether a payment is a per capita payment or a general welfare payment under section 139E. Finally, the TTAC Report states that the IRS should not be allowed to challenge an approved RAP with respect to any perceived conflict with IGRA and section 139E. Rather, the TTAC Report argues, the IRS must engage in consultation with the Tribe to resolve the perceived conflict. Finally, the TTAC Report requests that any enforcement by the IRS contrary to the RAP be prospective only, and that Tribes be given time to amend their RAPs with the DOI.

Some Tribal Comments argue that IGRA makes clear that not all equal distributions of gaming revenue are necessarily "per capita payments" to the extent that they are set aside for social welfare, medical assistance, education, housing, or similar purposes. Some Tribal Comments recommend that the proposed regulations focus on the purpose and methodology used to calculate the distributions, rather than the source of the funding or the value of the benefit. Finally, some Tribal Comments request that the IRS defer to a Tribe's RAP and not recharacterize general welfare payments as per capita payments.

The Treasury Department and the IRS are of the view that IGRA defines per capita payments and provides that those payments are includible in gross income for Federal income tax purposes. However, the Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments noting that IGRA distinguishes between taxable per capita payments and other types of payments, such as general welfare payments. The Treasury Department and the IRS also are of the view that Indian Tribal governments are in the best position to determine whether net gaming revenues should be used to fund per capita payments or general welfare payments.

The Treasury Department and the IRS do not agree with the TTAC Report that a distribution with a general welfare purpose under IGRA should be presumed to be a Tribal general welfare benefit under section 139E. Even if a payment is treated as having a general welfare purpose under IGRA, as designated in a RAP or otherwise, that purpose, by itself, is not sufficient to conclude that the payment is excludable from gross income under section 139E. Instead, the Indian Tribal government program must satisfy the requirements of section 139E (or other exclusion provision) for the payment to be excluded from the recipient's gross income.

Accordingly, proposed §1.139E-1(c)(5)(ii) would provide that benefits under the Indian Tribal government program may be funded by net gaming revenues as permitted under IGRA. However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or these proposed regulations. Proposed §1.139E-1(c)(5)(ii) would further provide that, for purposes of section 139E and the proposed regulations, a payment is a per capita payment if it is identified by the Indian Tribal government as a per capita payment in a RAP that is approved by the DOI. This language is intended to mean that, if the Indian Tribal government has an approved RAP, the provisions of the RAP determine whether a payment is a per capita payment for purposes of Federal income taxation. In contrast, if the Indian Tribal government does not have a RAP, the determination of the Indian Tribal government that payments are not per capita payments is controlling for Federal income tax purposes. Whether or not the Indian Tribal government has a RAP, deference will be given to the Indian Tribal government's determination of whether net gaming revenues are being used to make payments. The DOI is the Federal agency with sole authority to approve the use of net gaming revenues by an Indian Tribal government, including whether per capita payments may be made under a RAP.

In drafting these proposed regulations, the Treasury Department and the IRS have considered recent litigation addressing per capita payments made by one Tribe to its members. In *United States v. Jim*, 891 F.3d 1242 (2018), the 11th Circuit affirmed the district court's conclusion that section 139E did not apply to exclude per capita payments from a Tribal member's gross income. The court held that per capita payments are taxable under IGRA, a specific statute addressing Tribal net gaming revenues. The court also held that section 139E, a more general statute, does not control or nullify IGRA. The Treasury Department

and the IRS agree that section 139E does not control or nullify IGRA, and that per capita payments under IGRA cannot be excluded from gross income under section 139E. However, as noted in parts II.D and III.A.3 of this Explanation of Provisions, there is no prohibition in section 139E on Tribal general welfare benefits being paid from net gaming revenues, nor is there is a prohibition on Tribal general welfare benefits being paid in equal amounts to Tribal members. Thus, an Indian Tribal government may use net gaming revenues to provide benefits, whether or not uniform, to Tribal members. Further, those benefits may be excluded from gross income as Tribal general welfare benefits if (1) they are not designated, including under a RAP, as per capita payments by the Indian Tribal government, and (2) they otherwise meet the requirements in section 139E. For example, to be an excludable Tribal general welfare benefit, the benefit cannot be lavish or extravagant and must be provided under a program that is established by the Indian Tribal government and administered under specified guidelines.

III. *Tribal General Welfare Benefits*

Under section 139E(b), benefits provided under an Indian Tribal government program are Tribal general welfare benefits only if the benefits (1) are for the promotion of general welfare; (2) are available to any Tribal member who meets the guidelines; (3) are not lavish or extravagant; and (4) are not compensation for services. Proposed §1.139E-1(d) would describe each of these requirements.

A. *Benefits must be for the promotion of general welfare*

1. Deference to Tribes in Determining Promotion of General Welfare

Section 139E(b)(2)(B) requires that a benefit provided under an Indian Tribal government program be for the promotion of general welfare but does not define "promotion of general welfare." The TTAC Report recommends that promotion of general welfare should be presumed when the Indian Tribal government can substantiate that the benefit meets general welfare needs or purpose, and the method of distributing the benefit is expected to achieve program goals. Further, the TTAC Report states that an Indian Tribal government may substantiate that benefits meet general welfare needs or purposes by relying on data or studies corroborating the expenses. In addition, the TTAC Report recommends that an Indian Tribal government may show that the method of distribution is expected to achieve program goals by establishing Indian Tribal government-approved verification procedures such as direct pay arrangements, applications in which recipients agree to specified program requirements, or end-of-year certifications. Finally, the TTAC Report states that Indian Tribal governments must be afforded flexibility with regard to substantiating expenses that relate to Tribal cultural traditions, religious expenses, or historical need (such as benefits paid to elders to make up for historic economic deprivation and shorter life expectancy).

Many Tribal Comments request that deference be given to Tribes and Indian Tribal governments on whether the types and amounts of benefits are for the promotion of general welfare. These Tribal Comments state that the Indian Tribal government is best suited to address the unique needs of its members, with many insisting that such discretion should be unfettered. The Tribal Comments noted that many programs may not reflect how the Treasury Department and the IRS would traditionally view general welfare, including benefits such as wellness centers, health coaches, and access to dieticians.

Other Tribal Comments state that an official determination by the Indian Tribal government, such as a Tribal resolution or other formal action, should be sufficient to demonstrate that a benefit or program is for the promotion of general welfare. With respect to benefits provided, some Tribal Comments request that the regulations defer to Indian Tribal governments on determining whether benefits provided to Tribal members are considered "for the promotion of general welfare," particularly when the Indian Tribal government relies on its own data or other empirical data (for example, private studies, or based on Federal or state statistics). Many Tribal Comments argue that the Treasury Department and the IRS should avoid listing specific criteria required for a benefit to satisfy the promotion of general welfare requirement.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that deference should be given to the Indian Tribal government in determining whether a benefit is for the promotion of the general welfare of its Tribal members or other eligible individuals. The Indian Tribal government is in the best position to determine which general welfare benefits are best suited to meet the needs of its Tribal members and other eligible individuals. As a result, these proposed regulations would not define the term "for the promotion of general welfare" or specifically provide requirements that a benefit must meet in order to satisfy section 139E(b)(2)(B). Instead, proposed §1.139E-1(d)(2) would provide deference to the Indian Tribal government to determine, at the time the program is established, whether a benefit is for the promotion of general welfare of its Tribal members or other eligible individuals. Proposed §1.139E-1(d)(2) would provide further that an Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal Government's determination that a benefit is for the promotion of general welfare. These proposed rules would be consistent with the specific language in section 2(c) of the Act, which requires that deference be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

2. No Need Requirement

The administrative general welfare exclusion requires that payments be for the promotion of general welfare, which the IRS has interpreted to require a showing of individual or family need, notably financial need. This interpretation generally applies regardless of whether the benefits are provided by a Federal, State, or local government or by an Indian Tribal government. However, Revenue Procedure 2014-35 provides that the individual need criterion of the administrative general welfare exclusion is presumed to be met for certain benefits provided under an Indian Tribal government program. Sec-

tion 139E(b)(2)(B) requires that a benefit be for the promotion of general welfare but does not specifically define that term nor mention whether it incorporates a needs-based requirement.

The TTAC Report and majority of the Tribal Comments contend that the proposed regulations should not incorporate a needs-based requirement for the promotion of general welfare requirement in section 139E(b). The Tribal Comments note that section 139E is silent on an individual need requirement. Also, the Tribal Comments point to the language in Revenue Procedure 2014-35, which conclusively presumed individual need was satisfied, as support for not including a requirement for the showing of individual need in section 139E.

As noted in part III.A.1 of this Explanation of Provisions, proposed §1.139E-1(d)(2) would provide that an Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal Government's determination that a benefit is for the promotion of general welfare. Consistent with this approach, Indian Tribal Governments thus would have sole discretion as to whether to consider individual need or not in designing a general welfare program. In addition, the Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E was intended by Congress to generally codify Revenue Procedure 2014-35, which conclusively presumed that individual need was satisfied if the program met certain requirements. This conclusion is also consistent with the legislative history of section 139E. See House Debate, at H7601 (Representative Devin Nunes stating "that the IRS will not interpret the statute as requiring individualized determinations of financial need where a tribal government has established a program consistent with the statute"); see also Senate Colloquy, at S5686 (Senator Jerry Moran asking Senator Ron Wyden, and Senator Wyden agreeing, that the IRS will "in no event require an individualized determination of financial need" if a Tribal program meets the other requirements of section 139E).

Accordingly, proposed §1.139E-1(d)(2) specifically states that Tribal general welfare benefits may be provided without regard to the financial or other need of Tribal program participants. However, Indian Tribal governments have broad discretion to establish and administer general welfare programs and may choose to limit a program or its benefits to Tribal program participants based on a showing of individual need.

3. Benefits may be in Equal Amounts

Section 139E does not address whether Tribal general welfare benefits may be provided to recipients in equal amounts. However, in considering the enactment of section 139E, Representative Nunes expressed an intent that section 139E apply to pro rata payments. In addressing the IRS's frequent insistence that Tribal benefits be based on a stipulation based on individualized financial need, he stated, "This stipulation prevents the general welfare exclusion from covering programs designed to provide substantially equal benefits to all qualifying members of a tribe or to provide benefits based on determinations of needs that are not financial in nature." See House Debate, at H7601. Revenue Procedure 2014-35 does not directly address this issue of whether general welfare benefits under its safe harbors could be provided equally to all eligible individuals, but states that per capita payments to Tribal members of Tribal gaming revenues that are subject to IGRA are gross income under section 61, are subject to the information reporting and withholding requirements of sections 6041 and 3402(r), and are not excludable from gross income.

The TTAC Report correctly notes that section 139E does not prohibit general welfare benefits from being distributed in uniform amounts. The Tribal Comments recommend that the Treasury Department and the IRS defer to Tribes in determining whether pro rata payments (that is, uniform payments to each recipient) are appropriate. In general, several Tribal Comments, when referring to net gaming revenues under IGRA, argue that IGRA does not treat all pro rata payments as taxable, but instead looks to the purpose and methodology used to calculate the payments.[4] The Tribal Comments also request that the proposed regulations permit pro rata payments under an Indian Tribal government program, as several Tribal Comments emphasized that distributing benefits in equal amounts is often the most efficient method to provide benefits, such as for health and wellness and broadband internet access.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E does not prohibit an Indian Tribal government program from providing Tribal general welfare benefits to recipients in equal amounts. Accordingly, proposed §1.139E-1(d)(2) would provide that Tribal general welfare benefits may be provided on a uniform or pro-rata basis to Tribal program participants.

4. Specific Types of Benefits

The TTAC Report and the Tribal Comments recommend clarification on whether payment of benefits for disaster relief and similar assistance qualify under section 139E. In addition, both the TTAC Report and many Tribal Comments request that an Indian Tribal government disaster declaration qualify to establish the existence of a disaster for purposes of identifying relief payments under section 139E.

Section 139 generally provides an exclusion from gross income for qualified disaster relief payments. Qualified disaster relief payments generally include certain amounts paid to or for the benefit of an individual in connection with a qualified disaster, including a Federally declared disaster. Specifically, section 139(b)(4) includes as a qualified disaster relief payment an amount paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare. Section 139(b)(4) was enacted to codify the administrative general welfare exclusion for certain disaster relief payments, but does not supplant it. See Notice 2002-76 (2002-2 C.B. 917). Thus, benefits paid by Indian Tribal governments to individuals affected by a

[4] See part II.E. of this Explanation of Provisions for a fuller discussion of IGRA and general welfare payments made from net gaming revenues.

disaster may be excluded from the individuals' gross income if the requirements of the administrative general welfare exclusion are met. Similarly, these disaster relief benefits may be excluded from gross income if they qualify as Tribal general welfare benefits under section 139E.

The Treasury Department and the IRS recognize that Indian Tribal governments have broad discretion to provide benefits to individuals who are affected by a disaster or other emergency situation that does not meet the requirements of a qualified disaster under section 139. Thus, proposed §1.139E-1(d)(2) would include as a permissible general welfare purpose "assistance for disasters or emergency situations." The Indian Tribal government need not make a specific Tribal disaster declaration.

In addition, the TTAC Report requests that the proposed regulations specifically provide that wellness and health-related programs may be Tribal general welfare benefits. The TTAC Report acknowledges that section 139D applies to certain health care expenses but requests clarification that section 139E operates independent of, and is not limited by, section 139D of the Code. In particular, the concern is that wellness and health-related programs may not fall within the section 139D exclusion.

Section 139D generally provides an exclusion from gross income for any qualified Indian health care benefit. Qualified Indian health care benefits include medical care provided by an Indian Tribe or Tribal organization, or coverage under insurance or a plan provided by an Indian Tribe or Tribal organization for medical care. See section 139D(b)(2)-(4). For purposes of section 139D, "medical care" has the same meaning as when used in section 213 of the Code. Amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, are not amounts paid for medical care and thus are not excluded under section 139D. See section 213(d) and §1.213-1(e)(1)(ii).

The Treasury Department and the IRS agree that section 139E operates independently of, and is not limited by, section 139D. Thus, in accordance with the deference provided to Indian Tribal Governments in proposed §1.139E-1(d)(2), an Indian Tribal Government may determine that wellness and health-related programs are for the promotion of general welfare under section 139E.

B. *Benefits must be available to any Tribal program participant*

Section 139E(b)(2) provides, in relevant part, that a benefit provided under the program must be available to any Tribal member who meets the specified guidelines of the program. Revenue Procedure 2014-35 requires that the benefit be available to any eligible individual who satisfies the program guidelines, subject to budgetary constraints. The TTAC Report and the Tribal Comments do not specifically address this requirement.

The Treasury Department and the IRS have determined that this requirement should be interpreted in a manner similar to Revenue Procedure 2014-35. Thus, proposed §1.139E-1(d)(3) would provide that a benefit under the Indian Tribal government program must be available to any Tribal program participant who meets the specified guidelines of the program, subject to budgetary constraints.

C. *Benefits cannot be lavish or extravagant*

Section 139E(b)(2) provides, in relevant part, that benefits provided under the program cannot be lavish or extravagant. Section 139E(c)(3) provides that the Secretary, in consultation with the TTAC, must establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian Tribal government programs. The Treasury Department and the IRS have consulted with the TTAC during the drafting of these proposed regulations. In addition, the Treasury Department and the IRS will hold Tribal consultation before finalizing the proposed regulations.

Like section 139E, Revenue Procedure 2014-35 prohibits benefits that are lavish or extravagant. It does not define "lavish or extravagant" but does provide that the benefits cannot be "lavish or extravagant under the facts and circumstances."

The TTAC Report recommends that the term "lavish or extravagant" be defined as a relative term that depends on the unique circumstances of the Tribe, and also depends on the type of benefit being provided (such as, one-time payment or monthly assistance). The TTAC Report sets forth a non-exclusive list of circumstances that should be considered when determining if a benefit is lavish or extravagant: an Indian Tribal government's economic circumstances or factors, culture and cultural practices, history, geographic area, traditions, and resources. The TTAC Report recommends deference to Indian Tribal governments and proposes a rebuttable presumption that the benefit is not lavish or extravagant if the Indian Tribal government program meets general welfare needs or purposes, and the method of distribution is expected to achieve program goals.

Several Tribal Comments recommend that the proposed regulations defer to the Tribes or their Indian Tribal governments for determining whether a benefit is lavish or extravagant. Most Tribal Comments provide that the term is relative and depends on the unique circumstances of each Tribe and the type of benefit provided. Some Tribal Comments recommend deference to an Indian Tribal government's definition of lavish or extravagant as established by official actions, such as Tribal ordinances, resolutions, and policies. In addition, some Tribal Comments propose that a facts and circumstances standard, similar to Revenue Procedure 2014-35, be applied to define lavish or extravagant. Under such a standard, a benefit would not be lavish or extravagant if based upon a particular Tribe's political, socio-economic and cultural facts and circumstances as determined by that Tribe. Some Tribal Comments argue that the definition should be subject to the Tribal canon, as opposed to the traditional canons of statutory construction, and that any ambiguity be construed in favor of the Tribe.

Some Tribal Comments describe what the proposed regulations should not do when defining lavish or extravagant. For example, some Tribal Comments urge that the proposed regulations should define lavish or extravagant in a way that targets egregious abuse but otherwise does not affect Indian Tribal government programs that are designed and administered in good faith. Other Tribal Comments suggest that the term lavish or extravagant not

be defined by reference to dollar amounts, and specifically highlighted cost of living variations (for example, geographic differences). Some Tribal Comments emphasize that the proposed regulations should not use examples that may suggest limitations on the eligibility of program benefits. Specifically, these commenters suggest that it would be more helpful to include examples of benefits that are not considered lavish or extravagant. Finally, some Tribal Comments argue that the Treasury Department and the IRS should not refer to other Code provisions for guidance on interpreting the phrase "lavish or extravagant" under section 139E.

The Treasury Department and the IRS generally agree with the TTAC Report and the Tribal Comments. Accordingly, proposed §1.139E-1(d)(4) would provide a facts and circumstances test to determine whether a Tribal general welfare benefit is lavish or extravagant under section 139E. Under proposed §1.139E-1(d)(4), whether a benefit is lavish or extravagant would be based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances would include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. A facts and circumstances test is consistent with Revenue Procedure 2014-35, as well as the TTAC Report and the Tribal Comments suggesting that the Tribe's unique circumstances should be considered when evaluating whether the Indian Tribal government determined a Tribal general welfare benefit to be lavish or extravagant at the time the benefit is provided. However, proposed §1.139E-1(d)(4) also would provide a presumption that a benefit is not lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of the Indian Tribal government program.

The TTAC Report and some Tribal Comments mention that the frequency of benefit (for example, lump sum or monthly payment) should be considered when evaluating whether a program's benefit is lavish or extravagant. The Treasury Department and the IRS agree that the frequency of payment should be considered when determining whether a Tribal general welfare benefit is lavish or extravagant. Under a facts and circumstances test, an Indian Tribal government may establish a program that provides the types of benefits, including frequency of payment, that best meet the needs of its Tribal members.

D. *Benefits cannot be compensation for services*

Section 139E(b)(2)(D) provides that a Tribal general welfare benefit paid under an Indian Tribal government program cannot be compensation for services, with exceptions discussed in part IV of this Explanation of Provisions.[5] Section 139E(b)(2)(D) does not provide a specific definition for the term compensation for services for purposes of section 139E. Revenue Procedure 2014-35 also provides that benefits under the safe harbors cannot be compensation for services but does not specifically define compensation for services. The prohibition on compensation for services is a long-standing core principle of the administrative general welfare exclusion. See Revenue Ruling 75-246 (1975-1 C.B. 24).

The TTAC Report acknowledges that section 139E prohibits compensation for services from being treated as Tribal general welfare benefits. The TTAC Report and the Tribal Comments do not recommend a specific definition of compensation for services, but the TTAC Report recommends that the proposed regulations confirm that (1) a benefit in connection with Tribal custom or tradition regarding community service is not compensation for services; (2) compensation for services does not include cultural or ceremonial gifts and payments, as determined by the Tribe; and (3) payments as part of training programs are not compensation for services. Similar to this third issue, one Tribal Comment argues that on-the-job training, apprenticeships, and other classes for job skills for which participants receive payment should not be treated as compensation for services. Finally, one Tribal Comment argues that the rule in section 139E(b)(2)(D) should be read narrowly to cover services that are traditionally provided under an employment or contracted-vendor relationship.

The first two issues raised in the TTAC Report overlap with the rules in section 139E(c)(5), which provides that certain benefits provided for participation in cultural or ceremonial activities are not treated as compensation for services. These issues from the TTAC Report are addressed in part IV of this Explanation of Provisions. The third issue, relating to whether payments made to individuals in various types of training programs are compensation for services, is addressed under section 61 and current law relating to gross income generally.

Section 61(a) generally provides that, except as otherwise provided in the Code, gross income means all income from whatever source derived, and this includes compensation for services, including fees, commissions, fringe benefits, and similar items, whether paid in money or property. Section 1.61-2(a)(1) of the Income Tax Regulations provides additional examples of payments that are included in gross income because they are compensation for services, such as wages, salaries, and commissions paid salesmen. However, compensation for services also includes amounts that are not paid in an employment or contracted-vendor relationship. Thus, the proposed regulations do not adopt the Tribal Comment arguing that compensation for services should be read narrowly to cover only services that are traditionally provided under an employment or contracted-vendor relationship.

In the context of training, apprenticeships, and other skills training programs, existing IRS guidance on the administrative general welfare exclusion provides assistance on how to distinguish whether a payment is a general welfare payment or is compensation for services. See Revenue Ruling 63-136 (1963-2 C.B. 19) (excluding from income the payments for on-the-job career training or retraining where such payments are "intended to aid the recipients in their efforts to acquire

[5] Section 139E(c)(5) provides an exception under which any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture "shall not be treated as compensation for services." This exception to the general prohibition on compensation for services is addressed in part IV of this Explanation of Provisions.

new skills that would enable them to obtain better employment opportunities"); Revenue Ruling 65-139 (1965-1 C.B. 31) (as clarified by Revenue Ruling 66-240 (1966-2 C.B. 19)). In general, the determination as to whether payments under training programs are includible in a participant's gross income rests on whether the activity for which the payments are received is in exchange for the performance of services (compensation for services) or is for participation in a training program that promotes the general welfare (general welfare payment). Revenue Ruling 75-246 (1975-1 C.B. 24).

Because existing guidance addresses the long-standing distinction between compensation for services and general welfare payments, the Treasury Department and the IRS have determined that the proposed regulations should define compensation for services by reference to current law. Thus, proposed §1.139E-1(d)(5) would define the term compensation for services by referring to the rules in section 61(a). These rules encompass all the regulations and other IRS guidance under section 61(a) that interpret the meaning of compensation for services.

IV. *Exception to Prohibition on Compensation for Services*

As noted in part III.D. of this Explanation of Provisions, section 139E(b)(2)(D) generally provides that a Tribal general welfare benefit cannot be compensation for services. However, section 139E(c)(5) contains an exception to that general rule and provides that any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture will not be treated as compensation for services. Accordingly, such items may, if the other requirements of section 139E are satisfied, be Tribal general welfare benefits that are excluded from gross income.

Revenue Procedure 2014-35 contains a similar exception. Specifically, section 5.03 of the revenue procedure provides that the safe harbors apply to "benefits provided under an Indian Tribal governmental program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, or nominal cash honoraria provided to religious or spiritual officials or leaders. . . to recognize their participation in cultural, religious, and social events."

A. *Participation in cultural or ceremonial activities*

The exception in section 139E(c)(5) applies only if specific benefits are "for participation in cultural or ceremonial activities for the transmission of tribal culture." Revenue Procedure 2014-35 contains a similar exception, but that exception is limited to specific benefits "provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows [sic], rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events)." As the TTAC Report points out, Revenue Procedure 2014-35 refers only to event participation by religious or spiritual leaders and does not describe larger Indian Tribal-wide cultural, ceremonial, and community service general welfare programs. The TTAC Report recommends that the proposed regulations provide that the IRS must defer to Tribal determinations on what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Some Tribal Comments request that the exclusion apply to attendance at Tribal gatherings and participation in community service or tribal meetings. Some Tribal Comments provide examples of services that should not be considered compensation for services, such as blessings provided by Tribal members, preparation of traditional foods at events, support for sponsoring Tribal events, and the activities of traditional healers performed at or for official Tribal events like ceremonial or traditional gatherings. Finally, some Tribal Comments state that the proposed regulations should apply the section 139E(c)(5) exception to services that are traditionally provided through employment or contracted-vendor arrangements.

The Treasury Department and the IRS recognize that the language in section 139E(c)(5) is broader than Revenue Procedure 2014-35 in that the section 139E(c)(5) exception is not limited to religious or spiritual officials or leaders. The Treasury Department and the IRS also agree with the TTAC Report that Tribes are in the best position to determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Thus, proposed §1.139E-1(e) would provide that the Indian Tribal government determines what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture and would include the list of examples from Revenue Procedure 2014-35 (powwows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events). It would further provide that the IRS will defer to the Indian Tribal government's determination of whether an activity is a cultural or ceremonial activity for the transmission of Tribal culture.

The Treasury Department and the IRS do not agree with the Tribal Comments stating that the exception in section 139E(c)(5) broadly applies to services that are traditionally provided under an employment or contracted-vendor relationship because section 139E is an exclusion from gross income for individuals and families, not businesses. For example, a corporation owned by a Tribal member that contracts with the Indian Tribal government to cater a Tribal ceremony is not within the section 139E(c)(5) exception. In this case, any payment received by the corporation from the Tribe to provide catered food at a Tribal ceremony is business income. However, a Tribal member that volunteers to make traditional foods for a Tribal ceremony and receives an item of cultural significance, cash honorarium, or reimbursement of costs is within the exception of section 139E(c)(5).

B. *Items of cultural significance*

Section 139E(c)(5) provides, in part, that "items of cultural significance" that are provided for participation in cultural or ceremonial activities for the transmission of Tribal culture are not treated as compensation for services. Revenue Procedure 2014-35 also contains an exception for items of cultural significance that are not lavish or extravagant under the facts and circumstances. The term "items of cultural significance" is not defined in sec-

tion 139E or in Revenue Procedure 2014-35. The TTAC Report and the Tribal Comments recommend that deference should be given to Indian Tribal governments and Tribes to determine what are items of cultural significance for their Tribe. One Tribal Comment provides a list of examples of items with cultural significance, including blankets, cash, food, regalia items, fabric, beads, drums, pelts, feathers, artwork, baskets, clothing, household items, tobacco, gift cards, animals, and vehicles.

The Treasury Department and the IRS agree that Indian Tribal governments are in the best position to determine items of cultural significance. Thus, proposed §1.139E-1(e)(2) would provide that the Indian Tribal government determines items of cultural significance and that the IRS will defer to the Indian Tribal government's determination. Unlike the similar rule in Revenue Procedure 2014-35, the proposed regulations would not limit the items of cultural significance to those that are not lavish or extravagant. However, the prohibition on lavish or extravagant benefits in proposed §1.139E-1(d)(4) would apply broadly to all Tribal general welfare benefits, including those that are provided under section 139E(c)(5) for participation in cultural or ceremonial activities. In addition, the Treasury Department and the IRS do not view cash, gift cards, or vehicles themselves as items with cultural significance, although such items may be used to reimburse costs for participation in cultural or ceremonial activities without being considered compensation for services.

C. *Cash honorarium*

Section 139E(c)(5) provides, in part, that cash honoraria provided for participation in cultural or ceremonial activities for the transmission of Tribal culture is not treated as compensation for services. Revenue Procedure 2014-35 contains a similar exception, although it is limited to nominal cash honoraria. The term "cash honoraria" is not defined in section 139E or in Revenue Procedure 2014-35. The TTAC Report and the Tribal Comments request that the proposed regulations recognize Congress's decision to eliminate the qualifier that honoraria be "nominal" and provide that a Tribe's determination of the proper amount of the honorarium should be presumed to be reasonable and fair.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E is broader than Revenue Procedure 2014-35 by not limiting the exception to the compensation for services requirement to nominal cash honoraria. Thus, proposed §1.139E-1(e) would not provide that the compensation for services exception in section 139E(c)(5) is limited to nominal cash honoraria.

D. *Reimbursement of costs*

Section 139E(c)(5) provides, in part, that reimbursement of costs provided for participation in cultural or ceremonial activities for the transmission of Tribal culture is not treated as compensation for services. Revenue Procedure 2014-35 does not contain a similar exception. Section 139E(c)(5) does not define the term "reimbursement of costs." However, the Treasury Department and the IRS expect that the usual usage of the term applies for purposes of section 139E. Thus, the reimbursement of costs generally would include amounts paid by the Indian Tribal government to an individual to reimburse specific amounts paid by the individual to participate in the cultural or ceremonial activity.

E. *Members of other Tribes*

As noted in part I.D. of this Explanation of Provisions, the proposed regulations generally would define the term Tribal member to mean a member of the Tribe that establishes or maintains the Indian Tribal government program. Some Tribal Comments highlight that some Tribes may provide benefits to individuals who are Tribal members of a different Tribe than the one establishing the general welfare program. For example, an Indian Tribal government may provide benefits to a cultural, spiritual, or ceremonial leader of another Tribe who teaches shared Tribal cultural practices or ceremonial functions.

The Treasury Department and the IRS agree that, solely for purposes of the exception in section 139E(c)(5) relating to benefits provided for participation in ceremonial or cultural activities, the recipient may be a member of a Tribe that is different from the Tribe that establishes or maintains the program. Thus, proposed §1.139E-1(b)(8)(ii) would provide that, solely for purposes of proposed §1.139E-1(e), the definition of Tribal program participant may include a member of a Tribe that is different from the Tribe that establishes the Indian Tribal government program and provides the Tribal general welfare benefit. For example, if a cultural leader from one Tribe performs at another Tribe's powwow, a cash honorarium given to the cultural leader is not compensation for services under section 139E(c)(5).

V. *Issues Not Addressed in Proposed Regulations*

A. *Interaction with other Federal programs*

The TTAC Report requests that the proposed regulations provide that individual need be presumed for all Tribal general welfare benefits that meet the requirements of section 139E. Moreover, the TTAC Report and many Tribal Comments request that the Treasury Department and the IRS coordinate with other Federal agencies, including the Social Security Administration, to ensure that Tribal general welfare benefits are not treated as income or a disqualifying resource for purposes of program eligibility, such as supplemental security income benefits under 42 U.S.C. 1381 et seq.

The Treasury Department and the IRS have authority to interpret and provide rules under section 139E to determine whether a benefit is excludible from gross income for Federal income tax purposes. However, the issue of whether a Tribal general welfare benefit is taken into account for purposes of determining other Federal benefits is outside the authority of the Treasury Department and the IRS, and therefore beyond the scope of these proposed regulations. The Treasury Department and the IRS are willing to work with the TTAC and Tribes to confer with other Federal agencies and provide advice on how the Federal tax law applies to Tribal general welfare benefits.

B. *Grants to Indian-owned enterprises*

The TTAC Report requests that the proposed regulations provide that grants to establish or expand Indian-owned enterprises are excludible from gross income under section 139E. The TTAC Report cites Revenue Ruling 77-77 (1977-1 C.B. 11), for the proposition that non-reimbursable grants made under the Indian Financing Act of 1974 to Indians to expand profit-making Indian-owned economic enterprises on or near reservations are excludable from gross income under the administrative general welfare exclusion. The TTAC Report also requests that the guidance clarify that "expanding" a business includes assistance to help a business remain in operation or recover from losses, and also to allow the Tribe to be able to determine what it means to be an Indian-owned enterprise. One Tribal Comment also requests that grants for establishing and assisting Indian-owned enterprises should be excluded from gross income.

The administrative general welfare exclusion generally does not apply to payments made to businesses, including sole proprietors. Instead, the exclusion is intended to address benefits that promote the general welfare of families and individuals. See also Revenue Procedure 2014-35, which applies only to individuals and not to businesses. Section 139E also applies only to individuals and not to businesses. Thus, these proposed regulations do not address grants to Indian-owned enterprises. However, these proposed regulations do not affect the validity of Revenue Ruling 77-77, which provides a limited exception to the rule that the administrative general welfare doctrine does not apply to businesses. Under that revenue ruling, a grant made by an Indian Tribal government to a Tribal member to expand an Indian-owned business on or near a reservation is excluded from the Tribal member's gross income under the administrative general welfare exclusion.

C. *Trust arrangements and deferred benefits*

The TTAC Report states that an Indian Tribal government program may distribute general welfare benefits from trust arrangements, including payments that are set aside for the health, education, and welfare of trust beneficiaries under IGRA. The TTAC Report recommends that the proposed regulations provide that the determination of whether a payment is a general welfare benefit is made at the time the trust distributes the payment to the beneficiary from the trust. Some Tribal Comments asked that the proposed regulations expressly recognize that health, education, and welfare payments under a minor's trust can be structured in a way to qualify payments for exclusion under section 139E.

The TTAC Report requests that the proposed regulations provide that an Indian Tribal government program may permit Tribal members and other recipients to defer and accumulate benefits for future payment. The TTAC Report suggests that if the amount is not lavish or extravagant at the time the beneficiary defers receipt of the payment, then section 139E is satisfied at the time the Indian Tribal government distributes the funds to the beneficiary. The TTAC Report also recommends that section 139E not be limited by constructive receipt and economic benefit restrictions on the deferral of taxable income or benefits. Many Tribal Comments support the TTAC Report on the issue of deferred benefits, and request that the proposed regulations provide examples of deferred benefits.

Section 139E does not specifically address trust arrangements or deferred benefits. Section 139E addresses whether a benefit that is generally includible in gross income under section 61 may be excluded from gross income under section 139E. It does not address the taxable year in which a benefit may be includible in gross income, in particular if a benefit is put into a trust or its receipt is deferred through some other arrangement. Most individuals use the cash receipts and disbursements method of accounting, which incorporates numerous rules addressing when amounts must be included in gross income. Those rules generally apply in determining when a benefit must be included in the gross income and include the concepts of constructive receipt and economic benefit. In addition, there is existing authority addressing trusts under IGRA that is not affected by these proposed regulations. See Revenue Procedure 2011-56 (2011-49 I.R.B. 834), which provides a safe harbor under which the IRS treats a Tribe as the grantor and owner of a trust for the receipt of Tribal gaming revenues under IGRA for the benefit of minors and certain other individuals. However, as described in the Comments and Public Hearing section of this preamble, the Treasury Department and the IRS request comments on whether additional guidance is needed under section 139E or other Code sections to address the tax treatment of deferred benefits or benefits paid from trust arrangements and, if so, what specific fact patterns should be addressed.

D. *Advance rulings*

Some Tribal Comments propose that the Treasury Department and the IRS allow Tribes to request advance rulings at the option of the Tribe to address the tax status of general welfare programs. These comments request, however, that any procedure involving advance rulings requests must be implemented with narrow parameters to avoid becoming a de facto audit of Tribal programs. In addition, these Tribal Comments suggest that these advance rulings be binding on states and other Federal agencies. The Treasury Department and the IRS appreciate that Indian Tribal governments have been awaiting guidance under section 139E and have concerns about how the IRS may view existing general welfare programs. The IRS has a general process in place for entities and individuals to request a letter ruling on the tax treatment of a particular transaction or program, but that process generally does not apply if the request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued. See Revenue Procedure 2024-1 (2024-1 I.R.B. 1). If an Indian Tribal government or a Tribal member receives a letter ruling from the IRS, the ruling generally is binding on the IRS. However, a letter ruling would address only Federal tax law and would not be binding in any way on any other Federal agency or any state agency.

As discussed in part VIII of this Explanation of Provisions, section 4(a) of the Act requires the IRS to suspend all audits or examinations to the extent the audit or

examination relates to the exclusion from gross income of benefits under the general welfare exclusion. After soliciting public comments and holding Tribal consultation on these proposed regulations, the Treasury Department and the IRS intend to issue final regulations that provide clear and helpful guidance on Tribal general welfare benefits. Further, in accordance with section 3(b)(2) of the Act, the Secretary of the Treasury, in consultation with the TTAC, will establish certain training and education, which specifically includes the provision of training and technical assistance to Tribal financial officers about implementation of section 139E. The Treasury Department and the IRS will continue to work with the TTAC and Tribes throughout this rulemaking process to ensure that the final rules are comprehensive and provide as much clarity and certainty as possible within the parameters of the section 139E.

VI. *Safe Harbors and Examples*

The Tribal Comments were not uniform on whether it would be helpful for the proposed regulations to provide examples of benefits that qualify as Tribal general welfare benefits. Some Tribal Comments recommend examples to help Indian Tribal governments identify what types of benefits would be considered for promotion of general welfare. In contrast, some Tribal Comments express concern that a list of examples of permissible benefits would over time be viewed as an exhaustive list of permissible benefits.

The TTAC Report requests that Indian Tribal governments be given the ability to rely on programs that meet the safe harbor requirements of Revenue Procedure 2014-35. Some Tribal Comments argue that the safe harbors in Revenue Procedure 2014-35 were arbitrarily limiting and state that the proposed regulations should refrain from using safe harbors to avoid establishing similar limitations under section 139E. However, many other Tribal Comments recommend incorporating the safe harbors from Revenue Procedure 2014-35 into the proposed regulations or expanding the safe harbors to include payments from net gaming revenue, payments under section 139E(c)(5), and programs developed pursuant to official determinations by Indian Tribal governments. The Tribal Comments also request that the proposed regulations expressly state that a safe harbor is not intended to limit the types of general welfare programs otherwise permitted under section 139E.

Revenue Procedure 2014-35 contains numerous safe harbors under which the IRS will conclusively presume that the individual need requirement of the administrative general welfare exclusion is met. As a revenue procedure, this guidance represents an official statement of a procedure by the IRS that affects the rights or duties of taxpayers under Federal tax law, rather than an official statement of IRS position on a substantive tax issue like the administrative general welfare exclusion. *See* §601.601 of the Statement of Procedural Rules (25 CFR part 601). Thus, the safe harbors in Revenue Procedure 2014-35 do not represent examples of the application of the administrative general welfare exclusion, but instead are fact patterns for which the IRS is required to presume that the need requirement of the administrative general welfare exclusion is met. Accordingly, taxpayers may rely upon the safe harbors in Revenue Procedure 2014-35, but the revenue procedure does not have the force and effect of Treasury regulations.

The enactment of section 139E provides authority for the Treasury Department and the IRS to issue regulations to interpret section 139E. Regulations are the most authoritative form of published guidance and generally include substantive rules interpreting the statute. Treasury regulations often include examples in the regulatory text to illustrate specific provisions of the regulation. These examples describe how the regulatory rule applies to a set of facts, but examples cannot be the source of the rule itself.

The proposed regulations would provide examples of benefits that are for the promotion of general welfare under section 139E(b)(2)(B). The Treasury Department and the IRS agree that the examples in these proposed regulations are illustrations of benefits that are for the promotion of general welfare and are not intended to represent an exhaustive list of qualifying benefits. The examples in the proposed regulations also would incorporate the safe harbors in Revenue Procedure 2014-35. Section 139E was intended generally to codify Revenue Procedure 2014-35, and these proposed regulations are intended to be no less favorable than Revenue Procedure 2014-35, consistent with the intent of Congress reflected in the House Debate and Senate Colloquy in enacting the Act. Therefore, the general welfare programs described as safe harbors in Revenue Procedure 2014-35 would also be programs that satisfy the promotion of general welfare requirement under section 139E(b)(2)(B). Thus, these proposed regulations would include the list of programs described in section 5.02(2) of Revenue Procedure 2014-35 as a non-exhaustive list of the types of programs that would satisfy the general welfare requirement in section 139E and these proposed regulations. As described in the Comments and Public Hearing section of this preamble, the Treasury Department and the IRS request comments on whether additional examples are necessary.

VII. *Proposed Obsolescence of Revenue Procedure 2014-35*

Revenue Procedure 2014-35 generally provides principles for applying the administrative general welfare exclusion and provides safe harbors under which the IRS conclusively presumes that the individual need requirement of the administrative general welfare exclusion is met for benefits provided under Indian Tribal government programs that are described under section 5.02 or 5.03 of the revenue procedure. In Notice 2015-34, the Treasury Department and the IRS announced that section 139E codified (but does not supplant) the administrative general welfare exclusion for certain benefits provided under Indian Tribal government programs, and that "Revenue Procedure 2014-35 may be broader than section 139E in some instances."

Many Tribal Comments argue that the safe harbors in Revenue Procedure 2014-35 were superseded by section 139E. Some Tribal Comments express the preference that Revenue Procedure 2014-35 be expanded to explicitly incorporate the concept of deference to the Tribe.

The Treasury Department and the IRS are of the view that the proposed regulations, if finalized, generally would provide

rules that are at least as favorable as the safe harbors provided under Revenue Procedure 2014-35 and therefore, that Indian Tribal governments may have no further need to rely on Revenue Procedure 2014-35. In addition, the Treasury Department and the IRS expect that Indian Tribal governments would benefit by having a single set of rules that apply specifically to their general welfare benefit programs, rather than having to analyze their programs under both Revenue Procedure 2014-35 and the section 139E final regulations. Thus, the Treasury Department and the IRS propose to obsolete and supersede Revenue Procedure 2014-35 after the final regulations are applicable. As described in the Comments and Public Hearing section of this preamble, the Treasury Department and the IRS request comments on this issue.

VIII. *Audit Suspension and IRS Training*

Section 4 of the Act directs the Secretary of the Treasury to suspend all audits and examinations of Indian Tribal governments and members of Tribes (or any spouse or dependent of such a member) to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion, until the education and training prescribed by section 3(b)(2) of the Act is completed. Section 3(b)(2) of the Act directs the Secretary of the Treasury, in consultation with the TTAC, to establish and require (A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Tribes on Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made thereby.

The TTAC Report requests that the proposed regulations refer to the audit suspension provided in section 4 of the Act. Specifically, the TTAC Report requests that the proposed regulations provide that all audits and examinations of Indian Tribal governments, Tribal members, and qualified nonmembers (as defined in Revenue Procedure 2014-35) to the extent that an audit or examination relates to the reporting or exclusion of a Tribal general welfare benefit are suspended until a specified time related to prospective enforcement of the final regulations. The TTAC Report further requests that enforcement of the final regulations be delayed for one year after the training and guidance required by section 3(b)(2) of the Act is completed (the compliance date), and that when examinations commence, they relate only to the periods beginning on or after the one-year period beginning on or after the compliance date. The TTAC Report further states that guidance under section 139E must be applied prospectively and that Tribes and Tribal citizens who have developed and administered programs in good faith will not be audited retroactively once the audit suspension is lifted. Many Tribal Comments agree with the TTAC Report.

The Treasury Department and the IRS acknowledge that section 4 of the Act provides a temporary suspension of audits and examinations of Indian Tribal governments and Tribal members (or any spouse or dependent of such member) to the extent that the audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion. The Treasury Department and the IRS expect that the audit suspension described in section 4 of the Act will continue until all the requirements of section 3(b)(2) of the Act are satisfied. In particular, the Treasury Department and the IRS contemplate that the education and training described in section 3(b)(2) of the Act, which requires training to the Internal revenue field agents and to Tribal financial officers about implementation of section 139E, cannot and will not take place until final regulations are issued under section 139E. Thus, once final regulations under section 139E are issued, the Treasury Department and the IRS, in consultation with the TTAC, will conduct the required education and training under section 3(b)(2) of the Act. Only after that education and training is complete will the audit suspension be lifted. These proposed regulations do not address the education and training that will be required to be complete before the audit suspension is lifted, but the Treasury Department and the IRS will consult with the TTAC on the requirements of section 3(b)(2) of the Act before the commencement of the required education and training and will provide further guidance after that consultation.

IX. *Information Reporting*

If section 139E applies to exclude the value of a benefit from the Tribal program participant's gross income, then there is no requirement to file with the IRS or furnish to the Tribal program participant an information return on Form 1099-MISC, *Miscellaneous Information*, for that benefit. Indian Tribal governments should not include the amount of any benefit that qualifies for exclusion under section 139E on a Form 1099-MISC that is filed with the IRS and furnished to the Tribal program participant. Including such amounts on a Form 1099-MISC when such amounts are not required to be reported on the Tribal program participant's individual tax return could result in IRS compliance activity, such as inquiries from the IRS automated underreporting (AUR) program.

X. *Tribal Consultation*

Some Tribal Comments request that the Treasury Department and the IRS engage in consultation with Tribes throughout the development and implementation of the regulations, and any additional guidance. In addition, several of these Tribal Comments request additional consultation before the proposed regulations are published in the ***Federal Register***.

The Treasury Department and the IRS agree with the Tribal Comments and expect that consultation will continue throughout the rulemaking process that will culminate with the publication of final regulations in the ***Federal Register***. As noted in the Background section of this preamble, the Treasury Department and the IRS held consultation on the Act and the TTAC Report on December 14, 15, and 16, 2022, and also received comments pursuant to that consultation. These proposed regulations reflect the input from the TTAC Report and the comments received through consultation. The Treasury Department and the IRS also plan to hold consultation after

these proposed regulations are issued and will consider comments from that consultation when drafting final regulations. This consultation is in addition to the standard notice and comment process for proposed regulations, which will include the opportunity to participate in a public hearing and to provide comments through https://www.regulations.gov. Comments received during these processes will be considered and addressed in the final regulations. Finally, the Treasury Department and the IRS expect to continue discussions with the GWE Subcommittee and the TTAC on all aspects of section 139E.

Proposed Applicability Date

These regulations are proposed to apply to taxable years of Tribal Program Participants that begin on or after the date of publication of the final regulations in the ***Federal Register.***

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. In addition, the Treasury Department and the IRS request comments on the following specific issues:

(1) Should additional examples be included in the final regulations, and if so, what specific fact patterns or rules should be addressed by the additional examples?

(2) Should Revenue Procedure 2014-35 be obsoleted when the final regulations become applicable? If not, why is there a continuing need for it after the publication of final regulations?

(3) Do Indian Tribal governments anticipate needing any transition relief to adjust existing general welfare programs to satisfy these proposed regulations before they are finalized? If yes, please explain the nature of the transition relief needed and provide recommendations as to what relief would be helpful to Indian Tribal governments.

(4) Is additional guidance needed under section 139E or other Code sections to address the tax treatment of deferred benefits or benefits paid from trust arrangements, and, if so, what specific fact patterns should be addressed?

Any comments submitted will be made available at https://www.regulations.gov or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing will be held on January 13, 2025, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Pursuant to Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by December 16, 2024. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by December 16, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-106851-21 and the language TESTIFY In Person. For example, the subject line may say: “Request to TESTIFY In Person at Hearing for REG-106851-21.”

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106851-21 and the language TESTIFY Telephonically. For example, the subject line may say: “Request to TESTIFY Telephonically at Hearing for REG-106851-21.”

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number (REG-106851-21) and the language ATTEND In Person. For example, the subject line may say: “Request to ATTEND Hearing In Person for REG-106851-21.” Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025.

Individuals who want to attend the public hearing telephonically without testifying must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-106851-21) and the language ATTEND Hearing Telephonically. For example, the subject line may say: “Request to ATTEND Hearing Telephonically for REG-106851-21.” Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025.

The hearing will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) at least January 8, 2025**.**

Special Analyses

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Gov-

ernments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These proposed regulations have a substantial direct effect on one or more Federally-recognized Indian Tribes and do impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order. As a result, the Treasury Department intends to comply with section 5(b)(2)(A)-(B) of Executive Order 13175. In compliance with section 5(b)(2)(A) of Executive Order 13175 and in response to Tribal leader requests for proposed regulations, the Treasury Department and the IRS held consultations with Tribal leaders on December 14, 15, and 16, 2022, requesting assistance in addressing questions related to the Act and the TTAC Report, which informed the development of these proposed regulations. The Treasury Department and the IRS also intend to conduct Tribal consultation on these proposed regulations.

II. *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(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

III. *Paperwork Reduction Act*

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

These proposed regulations would include third-party disclosures and recordkeeping requirements that are required to substantiate that the value of a Tribal General Welfare Benefit is excluded from a recipient's gross income. These collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper substantiation of the gross income exclusion. The likely respondents to these collections are Indian Tribal governments and individuals.

The recordkeeping requirements in proposed §1.139E-1(c)(3) would provide that Indian Tribal government programs must be administered under specified guidelines and would provide general requirements on the content of those guidelines. Under proposed §1.139E-1(c)(3), the specified guidelines would need to, at a minimum, describe the program, the benefits provided, the eligibility requirements of the program, and the process for receiving benefits. Written specified guidelines would not be required. However, Indian Tribal governments may keep records of affidavits or declarations of how the program operates. These proposed regulations would not prescribe the specific method of keeping these records. Indian Tribal governments should keep these records in the manner they deem appropriate in order to substantiate that the program qualifies as an Indian Tribal government program under section 139E and these proposed regulations, and to assist Tribal program participants with determining that a Tribal general welfare benefit may be excluded from gross income under section 139E and these proposed regulations. Additionally, Indian Tribal governments should keep records they deem appropriate to substantiate that the Tribal general welfare benefits are distributed without discriminating in favor of the governing body of the Tribe, as described in proposed §1.139E-1(c)(4), are not lavish or extravagant, as described in proposed §1.139E-1(d)(4), and are not compensation for services, as described in proposed §1.139E-1(d)(5). This information will generally be used by the IRS for tax compliance purposes to ensure that Indian Tribal governments are distributing Tribal general welfare benefits in accordance with proposed §1.139E-1.

The recordkeeping requirements in proposed §1.139E-1(d)(4) would provide that whether a benefit is lavish or extravagant is based on the facts and circumstances at the time the benefit is provided. Proposed §1.139E-1(d)(4) would provide that a benefit will be presumed not to be lavish or extravagant if the Indian Tribal government establishes the program in writing and provides the benefit in accordance with the program's written specified guidelines. This presumption in proposed §1.139E-1(d)(4) for a benefit provided in accordance with the program's written specified guidelines would be an optional rule and an Indian Tribal government may choose not to apply such rule. This information will generally be used by the IRS for tax compliance purposes to ensure that Indian Tribal governments are distributing Tribal general welfare benefits in accordance with proposed §1.139E-1(d)(4).

The third-party disclosure requirement may apply to Indian Tribal governments that choose to provide notification to Tribal program participants that an Indian Tribal government program exists for which Tribal program participants may apply for benefits. These proposed regulations would not prescribe a specific method that Indian Tribal governments must use to announce the existence of a program. An Indian Tribal government may announce Indian Tribal government programs in any manner it deems appropriate.

These proposed regulations would not impose any additional recordkeeping requirements on Tribal program participants. However, Tribal program participants are required to maintain records under section 6001 sufficient to show that the value of a Tribal general welfare benefit received from an Indian Tribal government program is excludible from gross income. These records are required for the IRS to validate that taxpayers have met the regulatory requirements for a Tribal general welfare benefit, and that taxpayers are entitled to exclude the value of the benefit from gross income. The burden associated with maintaining tax records is already approved under OMB number 1545-0074 that is used for Form 1040, *Individual Tax Return*. These proposed regulations would not create or change the general recordkeeping requirement under section 6001.

There is limited data to calculate the burden estimates for these proposed regulations. The Treasury Department and the IRS estimate the burden based on the list of 574 Federally-recognized Tribes published by the Department of Interior, and estimate an upper bound of 2,296 Indian Tribal governments, including their agencies or instrumentalities. The estimate is based on an upper bound assumption that Indian Tribal government programs are set up by each Indian Tribal government of a Federally-recognized Tribe and by 3 separate agencies or instrumentalities of each such Indian Tribal government. A summary of the Paperwork Reduction Act burden estimates for the collections are as follows:

Indian Tribal governments (third-party disclosure and recordkeeping burden for Tribal entities):

Estimated Number of Respondents: 2,296

Estimated Time per Response: 2 hours

Estimated Frequency of Response: Once or on occasion

Estimated Total Burden Hours: 4,592 hours

The collections of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain, with copies to the Internal Revenue Service. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-106851-21 on the subject line). Comments on the collection of information should be received by December 16, 2024. Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

IV. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). These proposed regulations would affect Indian Tribal governments that establish and administer Tribal general welfare programs and that distribute Tribal general welfare benefits to certain individuals. The Treasury Department and the IRS have no reliable data to determine whether Tribal general welfare programs may be established and administered through small entities, such as not-for-profit entities. Although data is not readily available about the number of small entities that would potentially be affected by these proposed regulations, it is possible that a substantial number of small entities may be affected. However, any impact on those entities would not be economically significant and therefore a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

The impact of these proposed regulations can be described in the following categories. First, proposed § 1.139E-1(c) would provide guidance on what criteria a program must meet in order to be an "Indian Tribal Government Program." Specifically, proposed §1.139E-1(c) would provide that the program must be established by the Indian Tribal government; administered under specified guidelines; and not discriminate in favor of members of the governing body of the Tribe. Even assuming that these provisions would affect a substantial number of small entities, they would not have a significant economic impact. Section 139E(b) imposes the burden of what is needed to create an Indian Tribal government program. These proposed regulations would provide deference to Indian Tribal governments on the types of general welfare programs established, and generally defer to Indian Tribal governments on the form of the program's specified guidelines and the specific records they should maintain. As such, it is expected that the proposed regulations would have a minimal economic impact on Indian Tribal governments.

Second, proposed §1.139E-1(d) would provide guidance on whether a benefit is a "Tribal General Welfare Benefit" that is excluded from an individual's gross income. Specifically, proposed §1.139E-1(d) would require that the benefit be provided pursuant to an Indian Tribal government program; be for the promotion of general welfare; be available to any eligible Tribal program participant; not be lavish or extravagant; and, except as provided in section 139E(c)(5), not be for compensation for services. Proposed §1.139E-1(d) would provide deference to Indian Tribal governments on the types of benefits that promote the general welfare, the individuals who are eligible for benefits, and whether benefits are provided in exchange for participation in certain cultural or ceremonial activities under section 139E(c)(5) and these proposed regulations. It would also provide that a benefit is presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal government program. As such, it is expected that the proposed regulations would have a minimal economic impact on Indian Tribal governments.

Third, proposed § 1.139E-1(e) would permit an Indian Tribal government program to provide to Tribal program participant benefits that are items of cultural significance, reimbursement of costs, or cash honoraria for their participation in certain cultural or ceremonial activities.

Indian Tribal governments have broad discretion to determine whether or not these benefits are provided. Even assuming that this provision affects a substantial number of small entities, it would not have a significant economic impact because benefits that are items of cultural significance, reimbursement of costs, and cash honoraria are only a few types of the benefits that are permitted to be provided under section 139E and proposed §1.139E-1. An Indian Tribal government is not required to provide these types of benefits.

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

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

V. *Unfunded Mandates Reform Act*

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

VI. *Executive Order 13132: Federalism*

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

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 authors of these proposed regulations are Lisa Mojiri-Azad, Jonathan Dunlap, and Dominic DiMattia, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §§ 1.139E-1 and 1.139E-2 in numerical order to read in part as follows:

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

* * * * *

Sections 1.139E-1 and 1.139E-2 also issued under 26 U.S.C. 139E.

* * * * *

Par. 2. Sections 1.139E-0 through 1.139E-2 are added to read as follows:

* * * * *

Sec.

1.139E-0 Table of contents.

1.139E-1 Tribal general welfare benefits.

1.139E-2 [Reserved]

* * * * *

§1.139E-0 Table of contents.

This section lists the major captions for §§1.139E-1 and 1.139E-2.

§1.139E-1 Tribal general welfare benefits.

(a) Overview.
(b) Definitions.
(1) Act.
(2) Benefit.
(3) Code.
(4) Indian Tribal Government.
(5) Indian Tribal Government Program.
(6) Tribal General Welfare Benefit.
(7) Tribe.
(8) Tribal Program Participant.
(9) Tribal Member.
(10) Dependent.
(c) Indian Tribal Government Program.
(1) In general.
(2) Program must be established.
(3) Program must be administered under specific guidelines.
(4) Program cannot discriminate in favor of members of the governing body of the Tribe.
(5) No limitation on source of funds.
(d) Tribal General Welfare Benefits.
(1) In general.
(2) Benefits must be for the promotion of general welfare.
(3) Benefits must be available.
(4) Benefits cannot be lavish or extravagant.
(5) Benefits cannot be compensation for services.
(e) Cultural or ceremonial activities.
(1) In general.
(2) Application
(3) Examples.
(f) Audit suspension.
(g) Applicability date.

§1.139E-2 [Reserved]

§1.139E-1 Tribal general welfare benefits.

(a) *Overview*. Under section 139E of the Code and this section, the gross income of a Tribal Program Participant

for the taxable year does not include the value of any Tribal General Welfare Benefit provided by an Indian Tribal Government Program during the year to or on behalf of the Tribal Program Participant. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides the requirements that any program must satisfy to qualify as an Indian Tribal Government Program for purposes of this section. Paragraph (d) of this section provides the requirements that any benefit provided to or on behalf of a Tribal Program Participant must satisfy to qualify as a Tribal General Welfare Benefit for purposes of this section. Paragraph (e) of this section provides special rules related to cultural or ceremonial activities solely for purposes of this section. Paragraph (f) of this section describes the audit suspension provisions in section 4(a) of the Act. Paragraph (g) of this section provides the date of applicability of this section.

(b) *Definitions*. The following definitions apply for purposes of this section—

(1) *Act*. The term *Act* means the Tribal General Welfare Exclusion Act of 2014, Public Law 113–168, 128 Stat. 1883 (2014).

(2) *Benefit*. The term *benefit* means any money, property, services, or other item of value provided to or on behalf of an individual.

(3) *Code*. The term *Code* means the Internal Revenue Code.

(4) *Indian Tribal Government*. The term *Indian Tribal Government* means an Indian Tribal Government as defined by section 7701(a)(40) of the Code and includes any agencies or instrumentalities of such an Indian Tribal Government.

(5) *Indian Tribal Government Program*. The term *Indian Tribal Government Program* means a program that satisfies the requirements of paragraph (c) of this section.

(6) *Tribal General Welfare Benefit*. The term *Tribal General Welfare Benefit* means any benefit provided to or on behalf of a Tribal Program Participant that satisfies the requirements of paragraph (d) of this section for exclusion from gross income as an "Indian general welfare benefit" under section 139E of the Code.

(7) *Tribe*. The term *Tribe* means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village as defined in 43 U.S.C. 1602(c), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) *Tribal Program Participant*--(i) *In general*. The term *Tribal Program Participant* means a Tribal Member, spouse of a Tribal Member within the meaning of §301.7701-18 of this chapter, spouse of a Tribal Member under applicable Tribal law, dependent of a Tribal Member, or other individual who has been determined by the Indian Tribal Government to be eligible for a Tribal General Welfare Benefit because such individual is, with respect to a Tribal Member, an ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner.

(ii) *Special rule for ceremonial or cultural activities*. Solely for purposes of paragraph (e) of this section, the term *Tribal Program Participant* may include a member or citizen of a Tribe that is different from the Tribe that establishes or maintains the Indian Tribal Government Program that provides the Tribal General Welfare Benefit.

(9) *Tribal Member*. The term *Tribal Member* means an individual who is a member or citizen of the Tribe that establishes or maintains the Indian Tribal Government Program because the individual meets the requirements established by applicable Tribal law for enrollment in the Tribe, and:

(i) Is listed on the Tribal rolls of the Tribe if such rolls are kept;

(ii) Is recognized as a member by the Tribe if Tribal rolls are not kept; or

(iii) Is an Indian child as defined in 25 U.S.C. 1903.

(10) *Dependent*. The term *dependent* means an individual who—

(i) Is a qualifying child, as defined in section 152 of the Code, of a Tribal Member for the taxable year;

(ii) Is a qualifying relative, as defined in section 152, of a Tribal Member for the taxable year;

(iii) Is a qualifying child or qualifying relative of a Tribal Member described in paragraph (b)(10)(i) or (ii) of this section for the taxable year of the Tribal Member beginning in a calendar year without regard to whether the Tribal Member was a qualifying child or qualifying relative, each as defined in section 152, of another taxpayer for a taxable year of the other taxpayer beginning in that calendar year;

(iv) Is a qualifying child or qualifying relative of a Tribal Member described in paragraph (b)(10)(i) or (ii) of this section for the taxable year of the Tribal Member beginning in a calendar year without regard to whether the individual filed a joint return with the individual's spouse (as defined in section 6013 of the Code) for the taxable year beginning in that calendar year; or

(v) Is a qualifying relative of a Tribal Member described in paragraph (b)(10)(ii) of this section for the taxable year of the Tribal Member beginning in a calendar year without regard to the individual's gross income for the calendar year in which the individual's taxable year begins.

(c) *Indian Tribal Government Program*--(1) *In general*. A program is an Indian Tribal Government Program only if the program:

(i) Is established by the Indian Tribal Government, as described in paragraph (c)(2) of this section;

(ii) Is administered under specified guidelines, as described in paragraph (c)(3) of this section; and

(iii) Does not discriminate in favor of members of the governing body of the Tribe, as described in paragraph (c)(4) of this section.

(2) *Program must be established*--(i) *In general*. A program must be established by an Indian Tribal Government. A program established by Tribal custom or government practice, or by formal action of the Indian Tribal Government, is a program established by the Indian Tribal Government. Formal action means authorization of the program pursuant to applicable Tribal law. The formal action must be in writing to the extent such writing is required under applicable Tribal law. For example, written documentation that evidences the formal action of the Indian Tribal Government to establish the program is required if such written documentation is required under applicable Tribal law. Similarly, no written documentation of the formal action of the Indian Tribal Government to establish the program is required if, under applicable Tribal law,

no written documentation of such action is required. As an additional example, a program may be established by a voice vote if such voice vote would otherwise constitute formal action of the Indian Tribal Government under applicable Tribal law. To the extent permitted under applicable Tribal law, an Indian Tribal Government may delegate the authority for establishing a program to a designated individual or entity of the Indian Tribal Government.

(ii) *Examples*. The requirements of paragraph (c)(2) of this section are illustrated by the following examples:

(A) *Example 1*. A, a Tribe, operates under the direction of its Indian Tribal Government (the Council). According to the laws of A, all expenditures of A must be approved by a majority of the Council at the Council's annual meeting or by written unanimous consent if the action is taken without a meeting. During the annual meeting of A's Council, a majority of the Council vote to approve establishing a program. A's Council has established the program under paragraph (c)(2)(i) of this section.

(B) *Example 2*. Same facts as in paragraph (c)(2)(ii)(A) of this section (*Example 1*), except that, based on a recommendation from the Tribal Education office, A's Council determines to provide funding for a scholarship program to pay 100% of education related expenses for any Tribal Member who graduates from high school or receives a GED during the calendar year. Because the next Council meeting is scheduled in December 2024, and to avoid potential impact on eligible students, in February 2024, Council adopts by unanimous written consent the following education program:

(*1*) Approving $X of funding for the 2024 year for the scholarship program; and

(*2*) Authorizing the director of the Tribal Education office to use the approved funds for the scholarship program. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(C) *Example 3*. Same facts as in paragraph (c)(2)(ii)(B) of this section (*Example 2*) except that A's Council approves $X of annual funding to be provided for the education program, and delegates to the Tribal Education office authority to establish a scholarship program. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(3) *Program must be administered under specified guidelines*. A program must be administered under specified guidelines. The specified guidelines must include, at a minimum, a description of the program to provide Tribal General Welfare Benefits, the benefits provided by the program (including how benefits are determined), the eligibility requirements for the program, and the process for receiving benefits under the program. A program is administered under specified guidelines if the program is operated in accordance with such guidelines. Indian Tribal Governments may choose to, but are not required to, set forth the specified guidelines of the program in writing.

(4) *Program cannot discriminate in favor of members of the governing body of the Tribe*--(i) *In general*. Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program cannot discriminate in favor of members of the governing body of the Tribe. For the purposes of this paragraph (c)(4), a governing body means the legislative body of the Tribe, such as the Tribal Council, or the representative equivalent of the legislative body of the Tribe.

(ii) *General council Tribes.* A program is treated as being in compliance with this paragraph (c)(4) if the governing body of a Tribe consists of the entire adult membership of the Tribe.

(iii) *Facts and circumstances test*. Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program fails to satisfy the requirements of this paragraph (c)(4) if based on all the facts and circumstances the program either by its terms or in its administration discriminates in favor of members of the governing body of the Tribe. Accordingly, a program discriminates in favor of the members of the governing body of the Tribe if the program by its terms is available only to members of the governing body. Additionally, the administration of a program discriminates in favor of members of the governing body of the Tribe if, based on the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by members of the governing body fails to satisfy the requirements of this paragraph (c)(4).

(5) *No limitation on source of funds*—(i) *In general*. Benefits under the Indian Tribal Government Program may be funded by any source of revenue or funds. For example, an Indian Tribal Government may use funds derived from levies, taxes, and service fees; settlements; revenues from tribally-owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under an Indian Tribal Government Program.

(ii) *Benefits funded by net gaming revenues*. Benefits under the Indian Tribal Government Program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or this section. For purposes of section 139E and this section, a payment is a per capita payment if it is identified by the Indian Tribal Government as a per capita payment in a Revenue Allocation Plan that is approved by the Department of the Interior. *See* 25 U.S.C. 2710(b)(3) and 25 CFR 290.11.

(d) *Tribal General Welfare Benefits*--(1) *In general*. A benefit does not qualify as a Tribal General Welfare Benefit unless the benefit is:

(i) Provided pursuant to an Indian Tribal Government Program, as described in paragraph (c) of this section;

(ii) Provided for the promotion of general welfare, as described in paragraph (d)(2) of this section;

(iii) Available to any eligible Tribal Program Participant, as described in paragraph (d)(3) of this section;

(iv) Not lavish or extravagant, as described in paragraph (d)(4) of this section; and

(v) Not compensation for services, as described in paragraph (d)(5) of this section.

(2) *Benefits must be for the promotion of general welfare*--(i) *In general*. Tribal General Welfare Benefits must be for the promotion of general welfare. For purposes of section 139E and this paragraph (d)(2), the Indian Tribal Government determines that a benefit is for the promotion of general welfare at the time it establishes the Tribal General Welfare Program meeting the requirements of paragraph (c) of this section. An Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and the Internal Revenue Service will defer to the Indian Tribal Government's determination that a bene-

fit is for the promotion of general welfare. Benefits may be provided without regard to the financial or other need of Tribal Program Participants and may be provided on a uniform or pro-rata basis to Tribal Program Participants. Thus, for example, an Indian Tribal Government determines whether benefits are for the promotion of general welfare under programs such as cultural programs, housing assistance programs, programs to provide education benefits, programs for training or retraining to acquire new skills or to obtain better employment opportunities, programs to provide assistance for disasters or emergency situations, funeral or burial assistance programs, legal aid programs, wellness and health-related programs, or any programs that provide benefits to specific categories of individuals, such as elderly individuals or minors.

(ii) *Examples*. The requirements of paragraph (d)(2)(i) of this section are illustrated by the following examples. For the examples in this paragraph (d)(2)(ii), assume the Indian Tribal Government has determined that the benefits provided are for the promotion of general welfare.

(A) *Example 1*: *Housing programs*. Indian Tribal Government A administers a program, B, pursuant to which the following benefits are provided in connection with A's Tribal Members' principal residences and ancillary structures which are not used in any trade or business: payments for Tribal Members to use to make mortgage payments, down payments, and rent payments (including but not limited to security deposits); payments for Tribal Members to enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), and heating or cooling issues; payments for Tribal Members to provide for basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); and payments to Tribal Members to pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable). The payments made by A under B are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(B) *Example 2*: *Educational programs.* Indian Tribal Government C administers a program, D, pursuant to which the following benefits are provided: provision to students (including but not limited to post-secondary students) of transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities; tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education; provision of care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and provision of job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food), tutoring, and appropriate clothing for a job interview or training (including but not limited to an interview suite or a uniform required during a period of training). The payments made by C under D are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(C) *Example 3*: *Elder and disabled programs*. Indian Tribal Government E administers a program, F, pursuant to which the following benefits are provided to Tribal Members who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to an Indian Tribal Government's disability laws): meals through home-delivered meals programs or at a community center or similar facility; home care such as assistance with preparing meals or doing chores, or day care outside the home; local transportation assistance; and improvements to adapt housing to special needs (including but not limited to grab bars and ramps). The payments made by E under F are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(D) *Example 4*: *Transportation programs*. Indian Tribal Government G administers a program, H, pursuant to which the following benefits are provided: payment of transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation (as defined in section 168(j)), service area (as defined in 25 CFR 20.100), or service unit area (meaning an area designated for purposes of administration of Indian Health Service programs under 42 CFR 136.21(1)) and facilities that provide essential services to the public (such as medical facilities and grocery stores). The payments made by G under H are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(E) *Example 5*: *Medical programs*. Indian Tribal Government J administers a program, K, pursuant to which the following benefits are provided: payments for the cost of transportation, temporary meals, and lodging of a Tribal Program Participant while the individual is receiving medical care away from home, or to pay the cost of nonprescription drugs (including but not limited to traditional Tribal medicines). The payments made by J under K are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(F) *Example 6*: *Emergency programs*. Indian Tribal Government L administers a program, M, pursuant to which the following benefits are provided: assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses; payment of costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster); and assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals. The payments made by L under M are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(G) *Example 7*: *Cultural and religious programs.* Indian Tribal Government N administers a program, P, pursuant to which the following benefits are provided: payment of expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in a Tribe's cultural, social, religious, or community activities, such as powwows, ceremonies, and traditional dances; payment of expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including but not limited to other Indian reservations (as defined in section 168(j)); payment of the costs of receiving instruction about a Tribe's culture, history, and traditions (including but not limited to traditional language, music, and dances); payment of funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and payment of transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another Tribe. The payments made by N under P are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(3) *Benefits must be available*. The benefits provided under an Indian Tribal Government Program must be available to any Tribal Program Participant who meets the specified guidelines of the program required under paragraph (c)(3) of this section, subject to budgetary constraints. However, the Indian Tribal Government has discretion to determine the category of individuals who are Tribal Program Participants under the Indian Tribal Government Program, provided that such determination is consistent with the specified guidelines described in paragraph (c)(3) of this section and subject to the prohibition on discrimination under paragraph (c)(4) of this section. Thus, for example, an Indian Tribal Government is permitted to limit eligibility for an Indian Tribal Government Program to dependents of Tribal Members who have attained a specified age, or, as another example, to a Tribal Member's household.

(4) *Benefits cannot be lavish or extravagant*. The benefit provided by an Indian Tribal Government Program cannot be lavish or extravagant. Whether a benefit is lavish or extravagant for purposes of this section is based on the facts and cir-

cumstances at the time the benefit is provided. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. A benefit will be presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal Government Program.

(5) *Benefits cannot be compensation for services*. Except as provided in paragraph (e) of this section, a Tribal General Welfare Benefit does not include benefits that are provided as compensation for services to any person. Under section 61(a) of the Code, compensation for services includes fees, commissions, fringe benefits, and similar items, whether paid in money or property.

(e) *Cultural or ceremonial activities*--(1) *In general*. For purposes of section 139E and paragraph (d)(5) of this section, a benefit is not compensation for services if:

(i) The benefit is provided to a Tribal Program Participant for their participation in cultural or ceremonial activities for the transmission of Tribal culture as determined by the Indian Tribal Government (including, but not limited to, powwows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events); and

(ii) The benefit consists of an item of cultural significance as determined by the Indian Tribal Government, the reimbursement of costs, or a cash honorarium.

(2) *Application*. Except as otherwise provided in this paragraph (e)(2), an Indian Tribal Government has sole discretion to determine whether an item is an item of cultural significance and whether an activity is a cultural or ceremonial activity, and the Internal Revenue Service will defer to these determinations by the Indian Tribal Government. However, cash, gift cards, or vehicles are generally not items of cultural significance.

(3) *Examples*. The application of this paragraph (e) is illustrated by the following examples:

(i) *Example 1: Benefits for cultural or ceremonial activities not compensation for services.* Tribe B regularly holds a gathering during the fall season to celebrate its cultural traditions. During the gathering, Tribal Members of B, as well as Tribal members of other Tribes from around the region, are invited to participate. The Indian Tribal Government of B (ITG-B) allocates funds for the gathering, some of which are used for the following payments:

(A) *Tribal Member of B*. Individual 1, a Tribal Member of B, provides traditional blessings on the first and final days of the gathering. ITG-B gives Individual 1 a cash honorarium in recognition of providing the blessings. The cash honorarium that Individual 1 receives from ITG-B is not compensation for services under this paragraph (e).

(B) *Tribal Member of different Tribe*. Individual 2, a Tribal Member of Tribe C, participates as a drummer for a ceremonial dance on the second day of the gathering. ITG-B gives Individual 2 a piece of culturally significant jewelry. Under paragraph (a)(7)(ii) of this section, Individual 2 is a Tribal Program Participant solely for purposes of this paragraph (e). The jewelry that Individual 2 receives from ITG-B is not compensation for services under this paragraph (e).

(ii) *Example 2*: *Benefits for cultural or ceremonial activities not compensation for services*. Tribe C operates a language preservation center in which Individual 3, a Tribal Member of C, who speaks the traditional language that is common to C and other regional Tribes, volunteers to come in every Saturday to discuss and teach the traditional language of C to other Tribal Members of C. The Indian Tribal Government of C (ITG-C), reimburses Individual 3 for travel expenses and teaching supplies used in Individual 3's language lessons. The reimbursement of costs that Individual 3 receives from ITG-C is not compensation for services under this paragraph (e).

(f) *Audit suspension*. After [date of publication of the final regulations in the *Federal Register*], the Department of the Treasury and the Internal Revenue Service (IRS) will, in consultation with the Treasury Tribal Advisory Committee, establish and require the education and training prescribed in section 3(b)(2) of the Act. The temporary suspension of audits and examinations described in section 4(a) of the Act will not be lifted until the education and training prescribed by section 3(b)(2) of the Act is completed.

(g) *Applicability date*. This section applies to taxable years of Tribal Program Participants that begin on or after [date of publication of the final regulations in the *Federal Register*].

§1.139E-2 [Reserved]

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register September 13, 2024, 8:45 a.m., and published in the issue of the Federal Register for September 17, 2024, 89 FR 75990)

Notice of Proposed Rulemaking

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

REG-116787-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would 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 (PTC). The proposed coverage month amendment generally would provide that, in computing a PTC, a month may be a coverage month for an individual if the amount of the premium paid, including by advance payments of the PTC (APTC), for the month for the individual's coverage is sufficient to avoid termination of the individual's coverage for that month. The proposal also would amend the existing regulations relating to the amount of enrollment premiums used in computing the taxpayer's monthly PTC if a portion of the monthly enrollment premium for a coverage month is unpaid. Finally, the proposed regulations would clarify when an individual is considered to be ineligible for coverage under a State's Basic Health Program (BHP). The proposed regulations would affect taxpayers who enroll themselves, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange (Exchange) and may be allowed a PTC for the coverage. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Electronic or written comments must be received by November 1, 2024. A public hearing on this proposed regulation has been scheduled for December 13,

2024, at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by November 1, 2024. If no outlines are received by November 1, 2024, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-116787-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-116787-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Clara Raymond at (202) 317-4718; concerning submission of comments or outlines, or requests for a public hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code). Section 36B(h) provides an express delegation of authority for the Secretary of the Treasury or her delegate to prescribe regulations as may be necessary to carry out section 36B, including regulations that provide for the coordination of the credit allowed under 36B with the program for advance payment of the credit under section 1412 of the Affordable Care Act.[1] The proposed regulations are also issued under the express delegation of authority under section 7805 of the Code.

Background

I. *Definition of "Coverage Month" and Computation of PTC*

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 an 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. Family is defined in §1.36B-1(d), and the applicable percentage is defined in §1.36B-3(g).

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 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 their State Exchange.

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 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.

For a month for which a taxpayer's share of the enrollment premium is not

[1] The Affordable Care Act (or ACA) refers to the Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152, enacted on March 30, 2010).

paid in full, the current instructions for Form 1095-A require Exchanges to report $0 on Form 1095-A as the enrollment premium for that month, which signals to the taxpayer and the IRS that no PTC is allowed for that month (non-payment month) because a month in which the premium is not paid in full is not a coverage month. Thus, if an individual is enrolled in a QHP with APTC for a month but does not pay the full amount of the monthly premium as permitted under 45 CFR 156.270(d), 45 CFR 155.400(g), or applicable State law, $0 should be reported as the enrollment premium for the month, and a PTC is not allowed for that month for the coverage.

CMS has informed the Treasury Department and the IRS that, because CMS is not the entity that collects premium payments from an enrollee, implementing the section 36B definition of coverage month is challenging for CMS in situations in which the taxpayer's share of the premium is not paid in full but the taxpayer (or the taxpayer's enrollee) nevertheless may remain enrolled in a QHP with APTC, if applicable, under 45 CFR 156.270(d), 45 CFR 155.400(g), or applicable State law. An audit by the HHS Office of Inspector General[2] found that CMS currently reports to FFE and SBE-FP enrollees and the IRS on Form 1095-A the full enrollment premium for the first month of a grace period, notwithstanding that the taxpayer's share of the full premium for that month may never have been paid. Similarly, CMS currently reports to FFE and SBE-FP enrollees and the IRS on Form 1095-A the full enrollment premium (1) for months for which an issuer provides coverage to enrollees who satisfy the premium payment threshold, and (2) for months for which an issuer has been ordered by a State department of insurance, during a declared emergency, not to terminate an enrollee's coverage for the month even though the full premium has not been paid. Consequently, for these two scenarios as well as the grace period scenario, FFEs and SBE-FPs treat a month as a coverage month for which APTC is allowed, and the IRS would not have information to disallow a PTC for the month because the full enrollment premium is reported for the month.

In contrast, some State Exchanges have been reporting $0 as the enrollment premium for the first month of a grace period and for certain other months for which coverage was provided without the taxpayer's share of the full premium being paid. Consequently, taxpayers in these State Exchanges generally are unable to claim a PTC for those months.

II. *Determination of Ineligibility for a State's BHP*

As noted in section I of this Background, §1.36B-3(c)(1) provides that a month is a coverage month for an individual only if, among other requirements, 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). Under section 5000A(f)(1)(A) and §1.5000A-2, the term "minimum essential coverage" includes coverage under government-sponsored programs such as Medicaid, Children's Health Insurance Program (CHIP), and a State's BHP.[3]

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.

Under 42 U.S.C. 18051 and the implementing regulations at 42 CFR part 600, a State is allowed to establish a BHP for eligible individuals. Section 18051(e) provides that a resident of a State cannot be an eligible individual unless the individual is not eligible to enroll in the State's Medicaid program under title XIX of the Social Security Act for benefits that at a minimum consist of the essential health benefits described in 42 U.S.C. 18022(b).

The Treasury Department and the IRS have become aware that the rule in §1.36B-2(c)(2)(v) relating to an individual being considered ineligible for coverage under a Medicaid, CHIP, or a similar program, is ambiguous as it applies to a State's BHP and should be clarified.

Explanation of Provisions

I. *Change to the Definition of "Coverage Month" and Conforming Amendments to PTC Computation*

As explained in the Background section of this preamble, a PTC generally is allowed for a taxpayer for months that are coverage months for the taxpayer and other individuals in the taxpayer's family. Further, under §1.36B-3(c)(1)(ii), a month is not a coverage month for an individual unless the taxpayer pays the taxpayer's full 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.

Under HHS regulations at 45 CFR 156.270(d), issuers must provide coverage to enrollees for whom APTC is paid in the first month of a grace period, even if the enrollee's share of the premium for the coverage is unpaid. Thus, in that situation, the amount of the total premium paid by APTC is sufficient to allow for enrollees to remain covered. In addition, as noted in the Background section, Exchanges are not consistent in the manner they report enrollment premiums for the first month of a grace period, with some reporting the

[2] CMS AUTHORIZED HUNDREDS OF MILLIONS OF DOLLARS IN ADVANCED PREMIUM TAX CREDITS ON BEHALF OF ENROLLEES WHO DID NOT MAKE THEIR REQUIRED PREMIUM PAYMENTS (A-02-19-02005), OIG, March 2021, accessed at *https://oig.hhs.gov/oas/reports/region2/21902005.pdf*.

[3] Under the authority in section 5000A(f)(1)(A) and §1.5000A-2(f)(1)(E), coverage through a BHP standard health plan has been recognized as minimum essential coverage. *See* 42 CFR 600.5.

full premium for the month and others reporting $0. This inconsistent reporting may lead to disparate treatment among taxpayers, with some being allowed to claim a PTC for the first month of a grace period and others being denied PTC for such a month. The Treasury Department and the IRS are of the view that amending the coverage month rule would promote reporting consistency and thus would achieve more consistent treatment among taxpayers. Moreover, because HHS regulations require issuers to provide coverage for the first month of a grace period to enrollees for whom APTC is paid for that month, it is reasonable to provide consistent treatment for tax purposes. Thus, the proposed regulations would treat the first month of a grace period as a coverage month for PTC purposes if the other coverage month requirements in §1.36B-3(c) are satisfied. These proposed regulations are consistent with the express delegation of authority in section 36B(h)(1) to provide regulations that provide for coordination of the section 36B credit allowed with the APTC program.

In addition to addressing the first month of a grace period, the proposed regulations would address two other scenarios in which an issuer provides coverage even though the full enrollment premium is not paid as permitted under applicable law. In the first scenario, some issuers provide coverage for a month as long as at least a certain portion of the enrollee's premium for the month is paid, as permitted under CMS's premium payment threshold policy. The Treasury Department and the IRS are of the view that a month for which coverage is provided because a premium payment threshold is met should not fail to be a coverage month solely because the full premium has not been paid. Otherwise, a taxpayer could have monthly PTC disallowed due to a relatively small amount of unpaid premium, resulting in a tax liability that far exceeds the amount of the unpaid premium, for a month in which the amount paid for the coverage met the threshold for the provision of coverage permitted by HHS.

The second scenario involves a State department of insurance prohibiting an issuer from terminating QHP coverage during a declared emergency. In this scenario, if the issuer provides coverage for a month even though the enrollee's portion of the premium has not been fully paid, the Treasury Department and the IRS are of the view that the month should not fail to be a coverage month solely because the full premium has not been paid. This month should be treated as a coverage month because the portion, if any, of the premium that was paid is sufficient to provide coverage to the enrollees during an emergency situation under applicable State law.

Consequently, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would provide that, under these three scenarios, a month may be a coverage month for a taxpayer irrespective of whether the full premium for the month is paid by the unextended due date of the taxpayer's return for the year of coverage. The Treasury Department and the IRS request comments on whether there are other scenarios in which an issuer does not terminate coverage for a month for which the full premium has not been paid and whether such a month should be treated as a coverage month.

The proposed amendment to the definition of "coverage month" in §1.36B-3(c)(1) would require a conforming change to the calculation of the monthly PTC amount under §1.36B-3(d)(1)(i), which provides, in effect, that monthly PTC for a coverage month cannot exceed the premiums for the month, reduced by any amounts that were refunded in the same taxable year as the premium liability. If a month in which a portion of the enrollment premiums is unpaid is a coverage month, the premium used to compute the PTC for the month should not include the unpaid portion. Otherwise, a taxpayer could receive a monthly PTC for coverage that exceeds the amount of the premium paid for the coverage, which would result in an undue windfall to the taxpayer. In addition, as noted previously, existing regulations require, in computing monthly PTC, enrollment premiums to be reduced by amounts refunded in the year of coverage. Consistent with the existing rule for computing monthly PTC, the premiums used for computing monthly PTC under the proposed rule also should be reduced by unpaid amounts. Thus, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would provide that the premium for a month to be considered in determining PTC for an individual's coverage must be reduced by amounts refunded in the same taxable year as the premium liability is incurred and 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. Taxpayers would be instructed to comply with this rule by reducing their enrollment premiums on Form 8962, *Premium Tax Credit (PTC)*, for a coverage month by any amount that remains unpaid as of the unextended due date of their return.

II. *Determination of Ineligibility for Medicaid, CHIP, or a Similar Program*

As discussed in the Background section of this preamble, §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 assesses the individual to be not eligible for Medicaid or CHIP. The first part of the sentence references "Medicaid, CHIP or similar program," which includes a State's BHP. *See* 81 FR 91755, 91756. However, the second part of the sentence references only Medicaid or CHIP determinations under 45 CFR 155.302(b) and says nothing about determinations of eligibility under similar programs such as State BHPs. The unintended consequence of this language is that an individual who meets the criteria for coverage under a State BHP could be considered ineligible for the BHP coverage if the Exchange determines that the individual is ineligible for Medicaid or CHIP. Based on the Exchange determination of ineligibility for Medicaid or CHIP, the individual could enroll in a QHP and be allowed a PTC for the QHP coverage.

Consequently, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would clarify 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. Thus, under the proposed revision, an individual's determination of ineligibility for Medicaid or CHIP would not affect whether the individual is treated as ineligible for BHP coverage for purposes of determining whether a PTC is allowed.

III. *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.

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*.

Proposed Applicability Dates

The proposed regulations under §§1.36B-2 and 1.36B-3 are 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*.

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 proposed 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, which is the sole collection of information requirement imposed by section 36B and the regulations under section 36B. The rules in these proposed regulations, if finalized, would 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 proposed regulations, the change in burden will be reflected in the updated burden estimates for Form 8962.

III. *Regulatory Flexibility Act*

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that "describe[s] the impact of the proposed rule on small entities." *See* 5 U.S.C. 603(a). The term "small entities" is defined in 5 U.S.C. 601 to mean "small business," "small organization," and "small governmental jurisdiction," which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is "small" and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* title 13, part 121 of the Code of Federal Regulations (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* title 13, § 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the RFA provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on individual taxpayers, and entities will experience only small changes.

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their 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 (updated annually for inflation). This proposed 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 proposed 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.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble in the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including the economic impact of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing is being held on December 13, 2024, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by November 1, 2024. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by November 1, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the *Federal Register*.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have their name added to the building access list. The subject line of the email must contain the regulation number REG-116787-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-116787-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-116787-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-116787-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have their name added to the building access list. The subject line of the email must contain the regulation number REG-116787-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG-116787-23. Requests to attend the public hearing must be received by 5:00 p.m. ET on **December 11, 2024**.

Individuals who want to attend the public hearing telephonically without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-116787-23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-116787-23. Requests to attend the public hearing must be received by 5:00 p.m. ET on **December 11, 2024**.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by at least **December 10, 2024**.

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 proposed 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.

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

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

* * * * *

Section 1.36B-0 also issued under 26 U.S.C. 36B(h).

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-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 [insert the first date of the calendar year that begins after the date of publication of the final regulations in the *Federal Register*]. 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 [insert the first date of the calendar year that begins after the date of publication of the final regulations in the *Federal Register*].

Par. 3. 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);

4. Revising paragraph (n).

The revisions and additions 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 made.

* * * * *

(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 (d)(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 (d)(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 [insert the first date of the calendar year that begins after the date of publication of final regulations in the *Federal Register*]. 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 [insert the first date of the calendar year that begins after the date of publication of the final regulations in the *Federal Register*]. 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 [insert the first date of the calendar year that begins after the date of publication of the final regulations in the *Federal Register*].

(4) Paragraph (d)(1)(i) of this section applies to taxable years beginning on or after [insert the first date of the calendar year that begins after the date of publication of the final regulations in the *Federal Register*]. 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 [insert the first date of the calendar year that begins after the date of publication of the final regulations in the *Federal Register*].

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register September 16, 2024, 8:45 a.m., and published in the issue of the Federal Register for September 17, 2024, 89 FR 75984)

Notice of Proposed Rulemaking

Revising Qualified Domestic Trust Regulations under Section 2056A to Update Outdated References and Procedures

REG-119683-22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Federal estate tax regulations applicable to estates of decedents passing property to or for the benefit of a noncitizen spouse in a domestic trust for which the executor of the decedent's estate has made an election to be a qualified domestic trust and the trust satisfies all of the requirements for such treatment under applicable Federal tax law and regulations. The proposed regulations would modify those regulations to update outdated references, information, and procedures. The proposed regulations primarily would affect the estates of decedents passing property to or for the benefit of a noncitizen spouse in such a trust pursuant to applicable Federal tax law.

DATES: Written or electronic comments as well as requests for a public hearing must be received by October 21, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-119683-22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-119683-22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Donna Douglas, (202) 317-6859 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, Vivian Hayes by email at publichearings@irs.gov or by phone at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Estate Tax Regulations (26 CFR part 20) under section 2056A of the Internal Revenue Code (Code).

I. *Statutory Overview*

Although section 2056(d)(1) of the Code generally disallows a marital deduction for the value of property passing to a noncitizen spouse of a decedent or donor, section 2056(d)(2)(A) allows a marital deduction for such property passing to the decedent's surviving spouse in a qualified domestic trust (QDOT), as defined in section 2056A. Section 2056A of the Code was added by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647) and further amended by the Revenue Reconciliation Act of 1989 (Public Law 101-239), the Revenue Reconciliation Act of 1990 (Public Law 101-508), the Taxpayer Relief Act of 1997 (Public Law 105-34), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16).

Generally, for purposes of sections 2056 and 2056A, section 2056A(a) defines the term "qualified domestic trust," with respect to any decedent, as any trust if (1) its trust instrument meets certain requirements regarding the identity and powers of the trustee, (2) such trust meets such requirements as the Secretary of the Treasury or her delegate (Secretary) may by regulations prescribe to ensure the collection of any tax imposed by section 2056A(b), and (3) an election under section 2056A by the executor of the decedent's estate applies to such trust. Section 2056A(b) generally prescribes rules relating to a deferred estate tax on distributions of corpus from the QDOT during the spouse's lifetime and on the balance of the corpus held in the QDOT on the date of the spouse's death (section 2056A estate tax). Section 2056A(c) provides definitions of certain relevant terms, and section 2056A(d) provides rules regarding the section 2056A election. Finally, section 2056A(e) directs the Secretary to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 2056A.

II. *Regulatory Overview*

Regulations addressing the application of sections 2056(d) and 2056A were published in the *Federal Register* (58 FR 305) as proposed regulations on January 5, 1993 (1993 proposed regulations). The 1993 proposed regulations included proposed rules under §§20.2056A-1 through 20.2056A-13. Relevant to these proposed regulations, §20.2056A-2 of the 1993 proposed regulations sets forth the proposed qualification requirements for a QDOT; §20.2056A-4 of the 1993 proposed regulations sets forth the proposed procedures for conforming marital trust and nontrust marital transfers to the requirements of a QDOT; and §20.2056A-11 of the 1993 proposed regulations sets forth the proposed rules relating to filing requirements and payment of the section 2056A estate tax.

On August 22, 1995, after consideration of all written comments and public

hearing testimony, the 1993 proposed regulations were adopted as final regulations by the publication of TD 8612 in the *Federal Register* (60 FR 43531), with one exception: section 20.2056A-2(d) of the 1993 proposed regulations, which had proposed additional requirements to ensure collection of the section 2056A estate tax, was not finalized. On the same date, the Treasury Department and the IRS published TD 8613 in the *Federal Register* (60 FR 43554), which included temporary regulations under §20.2056A-2T(d) (1995 temporary regulations). The text of the 1995 temporary regulations also served, by cross-reference, as the text of reissued proposed regulations published on the same date in the *Federal Register* (60 FR 43574) to address and solicit further commentary on the additional requirements necessary to ensure collection of the section 2056A estate tax (1995 proposed regulations). On November 29, 1996, the Treasury Department and the IRS published TD 8686 in the *Federal Register* (61 FR 60551) to adopt §20.2056A-2(d) of the 1995 proposed regulations as final regulations (1996 final regulations). In an apparent oversight, the 1996 final regulations did not update the references to §20.2056A-2T(d) found in §§20.2056A-2, 20.2056A-4, and 20.2056A-11.

Explanation of Provisions

The Treasury Department and the IRS have determined that an update of §§20.2056A-2, 20.2056A-4, and 20.2056A-11 of the Estate Tax Regulations is required to remove outdated references to §20.2056A-2T(d). An update of §20.2056A-2 is also required to correct outdated references to a publication, to IRS officials and offices, and to procedures and addresses to be used by certain trustees to provide a security instrument to satisfy the requirements of a QDOT. In addition, an update to the definition of “finally determined” in §20.2056A-2(d)(1)(iii) is needed because the current definition of that term includes an outdated reference to the issuance of an estate tax closing letter. An update of §§20.2056A-4 and 20.2056A-11 is required to properly identify the titles of IRS officials authorized to enter into agreements with respect to the section 2056A estate tax and to grant extensions of time to file a Form 706-QDT, *U.S. Estate Tax Return for Qualified Domestic Trusts*, or to pay any section 2056A estate tax.

The Treasury Department and the IRS are aware that other matters in the current regulations under section 2056A may be outdated, but these matters do not cause the current regulations to be substantively inaccurate. For instance, the examples in §20.2056A-6 use outdated figures but accurately illustrate the application of the rules of the regulations. Modifications to update information that does not impede the ability of taxpayers and their representatives to comply with the regulations, or the ability of the IRS to process information provided by taxpayers or their representatives, are outside the scope of these proposed regulations.

I. *Section 20.2056A-2 – Qualification Requirements for QDOT*

A. *Updating references to the 1995 temporary regulations in §20.2056A-2(a) and (b)*

Current §20.2056A-2(a) and (b)(2) and (3) refer to §20.2056A-2T(d) in describing certain qualification requirements for QDOTs. Because the 1995 proposed regulations have been finalized, the Treasury Department and the IRS propose to update these paragraphs to reference §20.2056A-2(d) instead of §20.2056A-2T(d).

B. *Updating the definition of finally determined in §20.2056A-2(d)(1)(iii)*

Current §20.2056A-2(d)(1)(i) and (ii) provide alternate additional requirements, one of which will apply to a QDOT depending upon the fair market value, as finally determined for Federal estate tax purposes, of the assets passing to the QDOT. Current §20.2056A-2(d)(1)(iii) provides the definition of “finally determined” for purposes of §20.2056A-2(d)(1)(i) and (ii). This definition relies in part on the issuance by the IRS of an estate tax closing letter, an IRS practice that was routine prior to June 1, 2015, for every Federal estate tax return filed. Estate tax closing letters are no longer routinely issued by the IRS. The Treasury Department and the IRS propose to update §20.2056A-2(d)(1)(iii) to conform to current IRS procedures for establishing the final value of an asset for Federal estate tax purposes.

C. *Updating the name of offices, addresses, titles of officials, reference to the* Uniform Customs and Practice for Documentary Credits*, and procedure for filing required security instruments set forth in §20.2056A-2(d)(1)(i)(B) and (C)*

Current §20.2056A-2(d)(1)(i) requires that QDOTs with assets whose value exceeds $2 million must satisfy one of three alternative security arrangements to secure the payment of the section 2056A estate tax. Paragraphs (B) and (C) of §20.2056A-2(d)(1)(i), respectively, describe the requirements and form of the bond and the letter of credit that may be used as the required security arrangement. Both the provisions describing the requirements for each type of security, and the forms themselves, detail the notifications that must be given to the IRS of a decision not to renew the security arrangement and of the establishment of a replacement arrangement, if any. Precise addresses and IRS officials are identified in these paragraphs as the recipients of these notices but, as a result of changes in the titles of various IRS officials and the identification and location of the IRS offices responsible for the functions relevant to these security arrangements, this information is no longer accurate. Specifically, with respect to decedents who are residents of the United States, the required forms refer to the District Director of the District Office for Estate and Gift Tax Examination Group at the address of the District Office of the IRS that has examination jurisdiction over the decedent’s estate. With respect to decedents who are nonresident noncitizens and U.S. citizens who die domiciled outside the United States, the current regulations direct these notices to the Estate Tax Group, Assistant Commissioner (International) at 950 L’Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20241. Neither of these tax examination groups currently exists, and the examination of estate and gift tax returns is now part of a specialty examination group that keeps a national inventory. The Estate Tax Advisory Group currently

is the collection advisory office of the IRS tasked with monitoring the bond or letter of credit until there is a taxable disposition of the QDOT's assets or until the IRS determines that no tax will be owed (for example, when a noncitizen spouse becomes a citizen and the requirements of section 2056A(b)(12) are met). Accordingly, to correct the outdated references and to avoid future obsolescence if an office is moved, renamed, or eliminated, the Treasury Department and the IRS propose to update §20.2056A-2(d)(1)(i)(B) (*1*) and (*2*), and §20.2056A-2(d)(1)(i)(C) (*1*) and (*2*) to direct trustees, taxpayers, and their representatives to IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in IRS forms and instructions or on *https://www.irs.gov*, to determine the correct address to use when submitting the notices required in these sections of the regulations.

The text required by current §20.2056A-2(d)(1)(i)(C)(*2*) and (*3*) to be included in certain documents includes a reference to the *Uniform Customs and Practice for Documentary Credits*, 1993 Revision, ICC Publication No. 500 (Publication 500), which is published by the International Chamber of Commerce. The 1993 revision of Publication 500 is no longer the most recent edition of that publication. Accordingly, to correct the outdated references and to avoid any future obsolete references, the Treasury Department and the IRS propose to update these regulations to include language directing trustees, taxpayers, and their representatives to the most recent revision of Publication 500, which can be found on *www.iccwbo.org*.

Current §20.2056A-2(d)(1)(i)(B)(*4*) and (C)(*5*), respectively, provide that the bond or letter of credit is to be filed with the decedent's Federal estate tax return (Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, or Form 706-NA, *United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States*). Security instruments attached to a decedent's Federal estate tax return are not easily identified, which hinders prompt forwarding to the Estate Tax Advisory Group. Accordingly, the Treasury Department and the IRS propose to update these paragraphs to provide that a security instrument provided in compliance with §20.2056A-2(d) is not to be attached to the decedent's Federal estate tax return (Form 706 or Form 706-NA), but instead is to be filed by submitting it directly to the Estate Tax Advisory Group. In addition, the Treasury Department and the IRS propose to update these paragraphs to direct trustees, taxpayers, and their representatives to IRS Publication 4235, *Collection Advisory Offices Contact Information,* or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address that must be used to submit a security instrument provided in compliance with §20.2056A-2(d).

II. *Section 20.2056A-4 – Procedures for Conforming Marital Trusts and Nontrust Marital Transfers to the Requirements of a QDOT*

A. *Updating references to the 1995 temporary regulations in §20.2056A-4(a)(1), (2), and (c)(1)*

Current §20.2056A-4(a)(1) applies the requirements of §20.2056A-2T(d) in setting out the procedures for conforming marital trusts and nontrust marital transfers to the requirements of a QDOT. Current §20.2056A-4(a)(2) refers to §20.2056A-2T(d)(1) in describing the consequences of failing to comply with applicable requirements in the case of a judicial reformation, and to §20.2056A-2T(d)(3) with regard to the required annual statement. Current §20.2056A-4(c)(1) refers to §20.2056A-2T(d) in describing the circumstances under which property passing to a surviving spouse under a plan, annuity, or other arrangement which is not assignable or transferable (or is treated as such) can be treated as passing to the surviving spouse in the form of a QDOT. The Treasury Department and the IRS propose to update current §20.2056A-4(a)(1), (2), and (c)(1) to reference §20.2056A-2(d) instead of §20.2056A-2T(d) to reflect the publication of the 1996 final regulations.

B. *Updating titles of officials in §20.2056A-4(c)(6) and (7)*

Current §20.2056A-4(c)(2) and (3) describe alternative procedures the executor may use to cause a plan, annuity, or other arrangement which is not assignable or transferable (or is treated as such) to be treated as passing to the surviving spouse in the form of a QDOT. To conform a nonassignable annuity or other payment under current §20.2056A-4(c)(2) or (3), current §20.2056A-4(c)(6) requires the executor to file with the Federal estate tax return an *Agreement to Pay Section 2056A Estate Tax*, whose required language is included in this paragraph. Alternatively, current §20.2056A-4(c)(7) requires an *Agreement to Roll Over Annuity Payments*, whose required language is included in that paragraph. The required agreement under current §20.2056A-4(c)(6) refers to the District Director, and the required agreement under current §20.2056A-4(c)(7) refers to the Assistant Commissioner (International).

As discussed in part I.C. of this Explanation of Provisions, the examination of estate and gift tax returns is now handled by a specialty examination group that keeps a national inventory, and the Estate Tax Advisory Group is tasked with monitoring the bond or letter of credit until there is a taxable disposition of the QDOT's assets or until the IRS determines that no tax will be owed (for example, when a noncitizen spouse becomes a citizen and the requirements of section 2056A(b)(12) are met). Accordingly, the Treasury Department and the IRS propose to update current §20.2056A-4(c)(6) and (7) by replacing each reference to the District Director and Assistant Commissioner (International) with a reference to the Chief Tax Compliance Officer, IRS (or their delegate or designee or as otherwise provided in IRS forms and instructions or on https://www.irs.gov).

III. *Section 20.2056A-11 – Filing Requirements and Payment of the Section 2056A Estate Tax*

A. *Updating references to the 1995 temporary regulations in §20.2056A-11(a)*

Current §20.2056A-11(a) provides guidance on the due date of the section 2056A estate tax and on obtaining an extension of time for filing a Form 706-QDT. That paragraph also directs the reader to §20.2056A-2T(d)(3) regarding

the requirements for filing Form 706-QDT in the case of the required annual statement. The Treasury Department and the IRS propose to update current §20.2056A-11(a) to reference §20.2056A-2(d)(3) instead of §20.2056A-2T(d)(3) to reflect the publication of the 1996 final regulations.

B. *Updating titles of officials in §20.2056A-11(c)(1) and (2)*

Current §20.2056A-11(c)(1) and (2) provide guidance on obtaining an extension of time for paying the section 2056A estate tax, and states that an extension may be granted by the District Director or the Director of the service center where the Form 706-QDT is filed. The Treasury Department and the IRS propose to update current §20.2056A-11(c)(1) and (2) by replacing each reference to "the district director or director of the service center where the Form 706-QDT is filed" with a reference to "the Advisory Group Managers (or their delegate or designee or as otherwise provided in IRS forms and instructions or on https://www.irs.gov)."

IV. *Section 20.2056A-13 – Applicability Dates*

Current §20.2056A-13 provides the effective dates for all of the provisions of §20.2056A. Because these regulations propose applicability dates that are specific to the sections in which changes are being proposed, the Treasury Department and the IRS propose to make a coordinating change to §20.2056A-13 to reflect these specific exceptions.

Proposed Applicability Date

The regulations are proposed to apply with respect to estates of decedents dying on or after the date of publication of final regulations in the ***Federal Register***. For dates of applicability, see proposed §§20.2056A-2(e), 20.2056A-4(e), 20.2056A-11(e), and 20.2056A-13.

Special Analyses

I. *Regulatory Planning and Review*

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

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) 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.

The proposed regulations would update the current regulations under section 2056A by modifying and replacing outdated references, information, and procedures, such as references to IRS officials, offices, and addresses that no longer exist and references to temporary regulations. The collections of information within these proposed regulations include reporting and third-party disclosure requirements imposed by the IRS to ensure that the IRS has been provided with adequate security for the collection of the section 2056A estate tax, to allow marital trusts and nontrust marital transfers to be conformed to the requirements of a QDOT, and to provide extensions of time for the payment of section 2056A estate tax.

The proposed regulations include third-party disclosure and reporting requirements under proposed §20.2056A-2(d)(1)(i) for surety and banks to notify trustees and the IRS of the failure to renew a bond or letter of credit. These collection requirements are already approved by OMB under 1545-1443 for all filers. These proposed regulations would not change the already approved collection requirements, and only would modify the location of where to file. An update to the filing location does not change the already approved burden.

The proposed regulations include reporting requirements related to a security instrument used to meet the qualifications of a QDOT and filed at the time the executor of an estate files a Form 706 or 706-NA. The proposed regulations also include reporting requirements related to Form 706-QDT used to calculate and report the section 2056A estate tax due or to notify the IRS that the trust is exempt from future filing because a noncitizen spouse has become a citizen. These reporting requirements are already approved by OMB under 1545-1443 for all filers. These proposed regulations would not substantively change the collection requirements, and only would modify the location of where to file the security instruments and arrangements. An update to the filing location does not change the already approved burden.

The proposed regulations include reporting requirements related to requesting extensions using Form 4768 to file Form 706-QDT, Form 706, and Form 706-NA. These reporting requirements are already approved by OMB under 1545-0181 for all filers. These proposed regulations would not substantively change the collection requirements, and only would modify the location of where to file the extension. An update to the filing location does not change the already approved burden.

Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities. This rule primarily affects individuals (or their estates) and trusts, which are not small entities for purposes of the Regulatory Flexibility Act. Although it is anticipated that there may be an incremental economic impact on executors that are small entities, including entities that provide tax and legal services that assist individuals in preparing tax returns, any impact would not be significant and would not affect a substantial number of small entities.

Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

IV. *Section 7805(f)*

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

V. *Unfunded Mandates Reform Act*

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

VI. *Executive Order 13132: Federalism*

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

Comments and Requests for 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. In addition to requesting comments on all aspects of the proposed regulations, the Treasury Department and the IRS request comments on whether other rules in the current regulations under section 2056A require revision or removal to update information that is outdated (e.g., as a result of amendments to the Code, regulations, or local laws made after such rules were promulgated). 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 at *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 author of these proposed regulations is Donna Douglas of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 20 as follows:

PART 20 – ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Par. 2. Section 20.2056A-0 is amended by:

1. Revising the entry for paragraph (d)(6) of §20.2056A-2;
2. Adding an entry for paragraph (e) of §20.2056A-2;
3. Adding an entry for paragraph (e) of §20.2056A-4; and
4. Adding an entry for paragraph (e) of §20.2056A-11.

The revision and additions read as follows:

§20.2056A-0 Table of contents.

* * * * *

§20.2056A-2 Requirements for qualified domestic trust.

* * * * *

(d) * * *

(6) Special rules.

(e) Applicability date.

* * * * *

§20.2056A-4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

* * * * *

(e) Applicability date.

* * * * *

§20.2056A-11 Filing requirements and payment of the section 2056A estate tax.

* * * * *

(e) Applicability date.

* * * * *

Par. 3. Section 20.2056A-2 is amended by:

1. Revising the first sentence of paragraph (a);
2. Revising paragraph (b)(2);
3. Revising the first sentence of paragraph (b)(3);
4. Removing the fourth sentence of paragraph (d)(1)(i)(B)(*1*) and adding in its place two new sentences;
5. Revising the ninth and tenth sentences of paragraph (d)(1)(i)(B)(*2*);
6. Revising the first sentence of paragraph (d)(1)(i)(B)(*4*), and adding a new sentence at the end of the paragraph;
7. Removing the fourth sentence of paragraph (d)(1)(i)(C)(*1*) and adding in its place two new sentences;

8. Revising the first, fourteenth, and fifteenth sentences of paragraph (d)(1)(i)(C)(*2*);

9. Revising the first, tenth, and eleventh sentences of paragraph (d)(1)(i)(C)(*3*);

10. Revising the first sentence of paragraph (d)(1)(i)(C)(*5*), and adding a new sentence at the end of the paragraph;

11. Revising paragraph (d)(1)(iii);

12. Revising the paragraph heading of paragraph (d)(6);

13. Deleting paragraph (d)(6)(i);

14. Redesignating paragraphs (d)(6)(ii) and (iii) as paragraphs (d)(6)(i) and (ii) respectively; and

15. Adding paragraph (e).

The revisions and addition read as follows:

§20.2056A-2 Requirements for qualified domestic trust.

(a) *In general*. To qualify as a qualified domestic trust (QDOT), the requirements of paragraphs (b) through (d) of this section must be satisfied. * * *

(b) * * *

(2) *Property passing outright to spouse*. If property does not pass from a decedent to a QDOT, but passes to a noncitizen surviving spouse in a form that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A), and that is not described in paragraph (b)(1) of this section, the surviving spouse must either actually transfer the property, or irrevocably assign the property, to a trust (whether created by the decedent, by the decedent's executor, or by the surviving spouse) that meets the requirements of paragraphs (c) and (d) of this section (pertaining, respectively, to statutory requirements and regulatory requirements imposed to ensure collection of tax) prior to the filing of the estate tax return for the decedent's estate and on or before the last date prescribed by law that the QDOT election may be made (see §20.2056A-3(a)).

(3) * * * If property does not pass from a decedent to a QDOT, but passes under a plan or other arrangement that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A) and whose payments are not assignable or transferable (see §20.2056A-4(c)), the property is treated as meeting the requirements of this section, and the requirements of §20.2056A-2(d), if the requirements of §20.2056A-4(c) are satisfied. * * *

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) * * * Any notice of failure to renew is required to be sent to the Estate Tax Advisory Group of the Internal Revenue Service. See IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when submitting the required documentation. * * *

(*2*) * * * All notices required to be sent to the Internal Revenue Service under this instrument should be sent to the Estate Tax Advisory Group of the Internal Revenue Service. See IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when submitting the required documentation. * * *

* * * * *

(*4*) * * * The bond is to be filed (separately from the decedent's Federal estate tax return) by submitting it directly to the Estate Tax Advisory Group of the Internal Revenue Service on or before the later of the filing date or due date of the decedent's Federal estate tax return (Form 706 or 706-NA) unless an extension for filing the bond is granted under §301.9100 of this chapter. * * * See IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when submitting the required documentation.

(C) * * *

(*1*) * * * Any notice of failure to renew or closure of a U.S. branch of a foreign bank required to be sent to the Internal Revenue Service must be sent to the Estate Tax Advisory Group of the Internal Revenue Service. See IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in the IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when submitting the required documentation. * * *

(*2*) * * * The letter of credit must be made in the following form (or in the form that is the same as the following form in all material respects), or an alternative form that the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service

Attention: Estate Tax Advisory Group. (See IRS Publication 4235, *Collection Advisory Offices Contact Information,* or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when submitting the required documentation). * * *

Except where otherwise stated herein, this Letter of Credit is subject to the most recent revision of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce (ICC), which can be found on https://www.iccwbo.org. If we notify you of our election not to consider this Letter of Credit renewed and the expiration date occurs during an interruption of business described in the most recent revision of that publication, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business. * * *

(*3*) *Form of confirmation*. If the requirements of this paragraph (d)(1)(i)(C) are satisfied by the issuance of a letter of credit by a foreign bank with confirmation by a bank as defined in section 581, the confirmation must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form that the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service

Attention: Estate Tax Advisory Group. (See IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when

submitting the required documentation). * * *

Except where otherwise stated herein, this Confirmation is subject to the most recent version of the *Uniform Customs and Practice for Documentary Credits* published by the International Chamber of Commerce (ICC), which can be found on https://www.iccwbo.org. If we notify you of our election not to consider this Confirmation renewed and the expiration date occurs during an interruption of business described in the most recent version of that publication, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Confirmation is drawn against within 30 days after the resumption of business. * * *

* * * * *

(*5*) *Procedure*. The letter of credit (and confirmation, if applicable) is to be filed separately from the decedent's Federal estate tax return (Form 706 or Form 706-NA) by submitting it directly to the Estate Tax Advisory Group of the Internal Revenue Service on or before the later of the filing date or the due date of the decedent's Federal estate tax return (unless an extension for filing the letter of credit is granted under §301.9100 of this chapter). * * * See IRS Publication 4235, *Collection Advisory Offices Contact Information*, or as otherwise provided in IRS forms and instructions or on https://www.irs.gov, to determine the correct address to use when submitting the required documentation.

* * * * *

(iii) *Definition of finally determined*—(A) *In general*. For purposes of §20.2056A-2(d)(1)(i) and (ii), the fair market value of assets is the fair market value of those assets as finally determined for Federal estate tax purposes. That value is--

(*1*) The value reported on an estate tax return filed with the Internal Revenue Service, once the period of limitations on assessment (see section 6501) of estate tax has expired without that value having been timely adjusted by the Internal Revenue Service;

(*2*) The value determined or specified by the Internal Revenue Service for unreported property, or for reported property where the value determined or specified by the Internal Revenue Service differs from the value reported on an estate tax return filed with the Internal Revenue Service, once the period of limitations on assessment applicable to the estate tax has expired without that value having been timely contested by the executor;

(*3*) The value determined in a written agreement with the Internal Revenue Service (whether entered into during the course of the administrative proceedings between the estate and the Internal Revenue Service or after the commencement of litigation) once that written agreement has been executed by both the executor and the Internal Revenue Service and is binding on all parties (including, but not limited to, the executor, the Internal Revenue Service, and the beneficiaries); or

(*4*) The value determined by a court for the purpose of determining the estate tax liability of the estate, once the court's determination no longer can be appealed to any court.

(B) *Contested and Executor defined*. For purposes of this paragraph (d)(1)(iii), the term *contested* means to put at issue the value of property in a written communication to the Internal Revenue Service that identifies the specific property, states that the executor does not accept as correct the value of that property as determined or specified by the Internal Revenue Service, and provides the executor's claimed value for that property as determined in accordance with the requirements of section 2031, the corresponding regulations, and other applicable guidance. An issue cannot be contested by a general protective statement or written communication that does not include each of these specified elements. For purposes of this paragraph (d)(1)(iii), the term *executor* includes any person described in section 2203, as expanded to include all persons required under section 6018(b) to file an estate tax return.

* * * * *

(6) *Special rules*.

* * * * *

(e) *Applicability date.* This section applies with respect to estates of decedents dying on or after [the date of publication of final regulations in the ***Federal Register***].

Par. 4. Section 20.2056A-4 is amended by:

1. Revising the second sentence of paragraph (a)(1).

2. Revising the fifth and sixth sentences of paragraph (a)(2).

3. Revising the sixth sentence of paragraph (c)(1).

4. Revising the final sentence of (c)(6)(ii).

5. Revising the final sentence of (c)(7)(ii).

6. Revising paragraph (e).

The revisions read as follows:

§20.2056A-4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) * * *

(1) * * * For this purpose, the requirements of a QDOT include all of the applicable requirements set forth in §20.2056A-2. * * *

(2) * * * Thus, the trustee of the trust is responsible for filing the Form 706-QDT, paying any section 2056A estate tax that becomes due, and filing the annual statement required under §20.2056A-2(d)(3), if applicable. Failure to comply with these requirements may cause the trust to be subject to the anti-abuse rule under §20.2056A-2(d)(1)(v). * * *

* * * * *

(c) * * *

(1) * * * In the case of a plan, annuity, or other arrangement which is not assignable or transferable (or is treated as such), the property passing under the plan from the decedent is treated as meeting the requirements of §20.2056A-2 (pertaining to the general requirements, qualified marital interest requirements, statutory requirements, and requirements to ensure collection of the tax) if the requirements of either paragraph (c)(2) or (3) of this section are satisfied. * * *

* * * * *

(6) * * *

(ii) * * * I agree, at the request of the Chief Tax Compliance Officer, IRS (or their delegate or designee or as otherwise provided in IRS forms and instructions or on https://www.irs.gov), to enter into a security agreement to secure my undertakings under this agreement.

(7) * * *

(ii) * * * I agree, at the request of the Chief Tax Compliance Officer, IRS (or their delegate or designee or as otherwise provided in IRS forms and instructions or on https://www.irs.gov), to enter into a security agreement to secure my undertakings under this agreement.

* * * * *

(e) *Applicability date*. This section applies with respect to estates of decedents dying on or after [the date of publication of the final regulations in the ***Federal Register***].

Par. 5. Section 20.2056A-11 is amended by:

1. Revising the final sentence of paragraph (a);
2. Revising the final sentence of paragraph (c)(1);
3. Revising paragraph (c)(2); and
4. Adding paragraph (e).

The revisions and addition read as follows:

§20.2056A-11 Filing requirements and payment of the section 2056A estate tax.

(a) * * * See also §20.2056A-5(c)(1) regarding the requirements for filing a Form 706-QDT in the case of a distribution to the surviving spouse on account of hardship, and §20.2056A-2(d)(3) regarding the requirements for filing Form 706-QDT in the case of the required annual statement.

* * * * *

(c) * * *

(1) * * * Such extension may be granted by the Advisory Group Managers (or their delegate or designee or as otherwise provided in IRS forms and instructions or on https://www.irs.gov).

(2) *Extension of time for paying tax under section 6161(a)(1)*. An extension of time beyond the due date to pay any part of the estate tax imposed on lifetime distributions under section 2056A(b)(1)(A), or imposed at the death of the surviving spouse under section 2056A(b)(1)(B), or imposed at the termination of the QDOT (such as on the death or resignation of the U.S. trustee), may be granted for a reasonable period of time, not to exceed 6 months (12 months in the case of the estate tax imposed under section 2056A(b)(1)(B) at the surviving spouse's death), by the Advisory Group Managers (or their delegate or designee or as otherwise provided in IRS forms and instructions or on https://www.irs.gov).

* * * * *

(e) *Applicability date*. This section applies with respect to estates of decedents dying on or after [the date of publication of the final regulations in the ***Federal Register***].

Par. 6. Section 20.2056A-13 is amended by revising the section heading and the first sentence to read as follows:

§20.2056A-13 Applicability dates.

Except as provided in this section and in §§20.2056A-2(e), 20.2056A-4(e), and 20.2056A-11(e), the provisions of §§20.5056A-1 through 20.2056A-12 are applicable with respect to estates of decedents dying on or after August 22, 1995. * * *

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register August 20, 2024, 8:45 a.m., and published in the issue of the Federal Register for August 21, 2024, 89 FR 67580)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

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

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