INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–43
October 21, 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.

EMPLOYEE PLANS

Notice 2024-73, page 1007.

This notice provides guidance regarding discrete issues related to the application of the nondiscrimination rules of section 403(b)(12) with respect to the ERISA long-term, part-time (LTPT) employee rules for a section 403(b) plan. The ERISA LTPT rules were added under section 125 of the SECURE 2.0 Act of 2022 and are effective for plan years beginning after December 31, 2024. This notice also (1) provides that the Department of the Treasury and the Internal Revenue Service anticipate issuing proposed regulations with respect to section 403(b)(12)(D) and guidance with respect to sections 202(c) and 203(b)(4) of ERISA, (2) announces that the final regulation that the Treasury Department and the IRS intend to issue related to long term, part time employees under section 401(k) plans will apply no earlier than to plan years that begin on or after January 1, 2026, and (3) asks for comments on the content of this notice.

EXEMPT ORGANIZATIONS

Announcement 2024-35, page 1013.

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

INCOME TAX

Notice 2024-70, page 1001.

This notice explains the circumstances under which the four-year replacement period under section 1033(e)(2) is extended for livestock sold on account of drought. The Appendix to this notice contains a list of counties that experienced exceptional, extreme, or severe drought conditions during the 12-month period ending August 31, 2024. Taxpayers may use this list to determine if any extension is available.

Rev. Proc. 2024-38, page 1010.

This revenue procedure provides guidance on the effect on the income requirements under §§ 142(d) and 42 of the alternative income eligibility requirements for the Department of Housing and Urban Development–Veterans Affairs Supportive Housing (HUD–VASH) program set forth in the notice published by HUD in the Federal Register on August 13, 2024, 89 FR 65769.

Rev. Rul. 2024-22, page 980.

The revenue ruling holds that Bourse de Montréal (MX), a regulated exchange of Québec, Canada, is a "qualified board or exchange" within the meaning of section 1256(g)(7)(C).

Rev. Rul. 2024-23, page 981.

The revenue ruling holds that European Energy Exchange, a regulated exchange of Germany, is a "qualified board or exchange" within the meaning of section 1256(g)(7)(C).

T.D. 10007, page 981.

This document contains final regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The regulations affect participants in these transactions as well as material advisors.

Finding Lists begin on page ii.

SPECIAL ANNOUNCEMENT

Notice 2024-72, page 1005.
This notice grants relief under section 7508A to taxpayers affected by terrorist attacks throughout 2023 and 2024 in the State of Israel. The notice postpones deadlines for certain time-sensitive taxpayer acts (e.g., filing and paying taxes) and government acts (e.g., assessing and collecting taxes) for affected taxpayers for a full year, until September 30, 2025. The "covered area" includes the State of Israel, the West Bank and Gaza. The notice also identifies categories of affected taxpayers and provides a non-exhaustive list of the acts postponed. The separate determination of terroristic action and grant of relief in this notice will also postpone acts that were postponed by Notice 2023-71 until September 30, 2025 for taxpayers eligible for relief under both notices.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

Part I

Section 1256.—Section 1256 Contracts Marked to Market

(Also §§ 446, 481, 7805; 1.446-1, 301.7805-1).

Rev. Rul. 2024-22

ISSUE

Is Bourse de Montréal (MX), which is a regulated exchange of Québec, Canada, a qualified board or exchange within the meaning of § 1256(g)(7)(C) of the Internal Revenue Code (Code)[1]?

FACTS

MX is a regulated exchange of Québec, Canada. On December 23, 2011, the Commodity Futures Trading Commission (CFTC) published final rules regarding the registration with the CFTC of foreign boards of trade (FBOT). *See* Registration of Foreign Boards of Trade, 76 FR 80674 (Dec. 23, 2011), codified at 17 CFR Part 48. The effective date for the final rules was February 21, 2012. Under the CFTC FBOT registration system, the CFTC may issue an Order of Registration to an FBOT, allowing the FBOT to provide direct access to its electronic trading and order matching system from the United States. On August 25, 2015, the CFTC granted an Order of Registration to MX under the CFTC FBOT registration system. An FBOT's status under the CFTC FBOT registration system is posted online by the CFTC.

Rev. Rul. 86-7, 1986-1 C.B. 295, determined that the Mercantile Division of the Montréal Exchange is a qualified board or exchange within the meaning of § 1256(g)(7)(C). The Mercantile Division of the Montréal Exchange was an exchange associated with MX that has ceased operations and is now dormant.

LAW

Section 1256(g)(7) provides that the term "qualified board or exchange" means:

(A) a national securities exchange that is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the CFTC, or

(C) any other exchange, board of trade, or other market that the Secretary of the Treasury or her delegate determines has rules adequate to carry out the purposes of § 1256.

HOLDING

The Internal Revenue Service (IRS) determines that MX, which is a regulated exchange of Québec, Canada, is a qualified board or exchange within the meaning of § 1256(g)(7)(C) as long as MX holds a valid Order of Registration under the CFTC FBOT registration system.

Effect on other revenue rulings

Rev. Rul. 86-7 is obsoleted.

PROSPECTIVE APPLICATION

Under the authority of § 7805(b)(8), this revenue ruling is effective for MX Contracts entered into on or after November 1, 2024. In the preceding sentence, the term "MX Contracts" means futures contracts and futures contract options that are traded on or subject to the rules of MX, that are described in § 1256(g)(1)(A), and that are not covered by the exception in § 1256(b)(2).

Under the authority of § 7805(b)(8), the IRS will not challenge a position taken prior to November 1, 2024, with respect to a transaction occurring prior to such date, by a taxpayer that reasonably relied on the conclusion in Rev. Rul. 86-7.

CHANGE IN METHOD OF ACCOUNTING

A change in the treatment of MX Contracts to comply with this revenue ruling is a change in method of accounting within the meaning of §§ 446 and 481 and the regulations thereunder. The Commissioner grants consent to a taxpayer to change its method of accounting for MX Contracts entered into on or after November 1, 2024, to the § 1256 mark-to-market method for the first taxable year during which the taxpayer holds such contracts. The requirement to file a Form 3115, *Application for Change in Accounting Method*, in § 1.446-1(e)(3)(i) of the Income Tax Regulations is waived. The change is made on a cut-off basis and is inapplicable to MX Contracts that were entered into before November 1, 2024. Because the change is made on a "cut-off" basis, there is no potential omission or duplication of income or deductions, and an adjustment under § 481 is neither permitted nor required.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jonathan A. LaPlante of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Jonathan A. LaPlante at (202) 317-5102 (not a toll-free number).

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

Section 1256.—Section 1256 Contracts Marked to Market

(Also §§ 446, 481, 7805, 1.446-1, 301.7805-1).

Rev. Rul. 2024-23

ISSUE

Is European Energy Exchange, which is a regulated exchange of Germany, a qualified board or exchange within the meaning of § 1256(g)(7)(C) of the Internal Revenue Code (Code)[1]?

FACTS

European Energy Exchange is a regulated exchange of Germany. On December 23, 2011, the Commodity Futures Trading Commission (CFTC) published final rules regarding the registration with the CFTC of foreign boards of trade (FBOT). *See* Registration of Foreign Boards of Trade, 76 FR 80674 (Dec. 23, 2011), codified at 17 CFR Part 48. The effective date for the final rules was February 21, 2012. Under the CFTC FBOT registration system, the CFTC may issue an Order of Registration to an FBOT, allowing the FBOT to provide direct access to its electronic trading and order matching system from the United States. On November 5, 2019, the CFTC granted an Order of Registration to European Energy Exchange under the CFTC FBOT registration system. An FBOT's status under the CFTC FBOT registration system is posted online by the CFTC.

LAW

Section 1256(g)(7) provides that the term "qualified board or exchange" means:

(A) a national securities exchange that is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the CFTC, or

(C) any other exchange, board of trade, or other market that the Secretary of the Treasury or her delegate determines has rules adequate to carry out the purposes of § 1256.

HOLDING

The Internal Revenue Service determines that European Energy Exchange, which is a regulated exchange of Germany, is a qualified board or exchange within the meaning of § 1256(g)(7)(C) as long as European Energy Exchange holds a valid Order of Registration under the CFTC FBOT registration system.

PROSPECTIVE APPLICATION

Under the authority of § 7805(b)(8), this revenue ruling is effective for European Energy Exchange Contracts entered into on or after November 1, 2024. In the preceding sentence, the term "European Energy Exchange Contracts" means futures contracts and futures contract options that are traded on or subject to the rules of European Energy Exchange, that are described in § 1256(g)(1)(A), and that are not covered by the exception in § 1256(b)(2).

CHANGE IN METHOD OF ACCOUNTING

A change in the treatment of European Energy Exchange Contracts to comply with this revenue ruling is a change in method of accounting within the meaning of §§ 446 and 481 and the regulations thereunder. The Commissioner grants consent to a taxpayer to change its method of accounting for European Energy Exchange Contracts entered into on or after November 1, 2024, to the § 1256 mark-to-market method for the first taxable year during which the taxpayer holds such contracts. The requirement to file a Form 3115, *Application for Change in Accounting Method*, in § 1.446-1(e)(3)(i) of the Income Tax Regulations is waived. The change is made on a cut-off basis and is inapplicable to European Energy Exchange Contracts that were entered into before November 1, 2024. Because the change is made on a "cut-off" basis, there is no potential omission or duplication of income or deductions, and an adjustment under § 481 is neither permitted nor required.

DRAFTING INFORMATION

The principal author of this revenue ruling is Shawn Tetelman of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Shawn Tetelman at (202) 317-7053 (not a toll-free number).

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26 CFR 1.6011-9: Syndicated conservation easement listed transactions

T.D. 10007

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Syndicated Conservation Easement Transactions as Listed Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The regulations affect participants in these transactions as well as material advisors.

DATES: *Effective date*: These regulations are effective on October 8, 2024.

Applicability date: For applicability dates, *see* §1.6011-9(h).

FOR FURTHER INFORMATION CONTACT: Concerning any provisions

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

in the final regulations within the jurisdiction of the Associate Chief Counsel (Income Tax & Accounting), Joshua S. Klaber, (202) 317-4624, and Eugene Kirman, (202) 317-5149, and concerning any provisions in the final regulations within the jurisdiction of the Associate Chief Counsel (Passthroughs & Special Industries), Charles Wien, (202) 317-5279 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 6011 of the Internal Revenue Code (Code) to identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction (final regulations).

Section 6001 of the Code provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary), requiring every taxpayer to keep the records, render the statements, make the returns, and comply with the rules and regulations that the Secretary deems necessary to demonstrate tax liability and prescribes, either by notice served or by regulations.

Section 6011 of the Code provides an express delegation of authority to the Secretary, requiring every taxpayer to "make a return or statement according to the forms and regulations prescribed by the Secretary" and "include therein the information required by such forms or regulations."

In addition, section 6707A(c)(1) of the Code, in defining the term "reportable transaction" relating to the imposition of penalties under section 6707A(a) on "[a]ny person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement," provides an express delegation of authority to the Secretary, stating that, "[t]he term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion." Section 6707A(c)(2), in defining the term "listed transaction" provides an express delegation of authority to the Secretary, stating that, "[t]he term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011."

The final regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

Background

I. ***The Proposed Regulations***

On December 8, 2022, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-106134-22) in the ***Federal Register*** (87 FR 75185) proposing regulations that would identify certain syndicated conservation easement transactions and substantially similar transactions as "listed transactions" for purposes of §1.6011-4(b)(2) and sections 6111 and 6112 of the Code (proposed regulations). The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations. The Treasury Department and the IRS received 26 comments in response to the proposed regulations and notice of public hearing that are the subject of this final rulemaking. The comments are available for public inspection at https://www.regulations.gov or upon request. A public hearing on the proposed regulations was held by teleconference on March 1, 2023, at 10 a.m. Eastern Time, at which five speakers provided testimony.

After full consideration of the comments received and the testimony provided, these final regulations adopt the proposed regulations with certain revisions described in the Summary of Comments and Explanation of Revisions.

II. ***Section 605 of the SECURE 2.0 Act***

The SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (December 29, 2022), was enacted just 15 days after publication of the proposed regulations. Section 605(a) of the SECURE 2.0 Act added section 170(h)(7)(A) to the Code, which provides that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership, as defined in section 170(h)(7)(B). Section 170(h)(7)(F) states that the rules of section 170(h)(7) apply equally to S corporations and other pass-through entities.

Section 605(a) of the SECURE 2.0 Act also added section 170(h)(7)(C) through (E) to the Code, which provide three exceptions to the general disallowance rule in section 170(h)(7)(A). Section 170(h)(7)(C) creates an exception for contributions by a pass-through entity that satisfy a three-year holding period; section 170(h)(7)(D) creates an exception for contributions made by family pass-through entities; and section 170(h)(7)(E) creates an exception for contributions made to preserve a building that is a certified historic structure (as defined in section 170(h)(4)(C)).

Section 605(b) of the SECURE 2.0 Act added section 170(f)(19) to the Code, creating additional reporting requirements for any qualified conservation contribution (1) the conservation purpose of which is the preservation of any building which is a certified historic structure (as defined in section 170(h)(4)(C)), (2) which is made by a partnership (whether directly or as a distributive share of a contribution of another partnership), and (3) the amount of which exceeds 2.5 times the sum of each partner's relevant basis (as defined in section 170(h)(7)) in the partnership making the contribution. Section 170(f)(19)(C) states that, except as may be otherwise provided by the Secretary, the rules of section 170(f)(19) apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships.

Section 170(f)(19)(A) provides that no deduction is allowed for such a contribu-

tion unless the entity making the contribution (1) includes on its return for the taxable year in which the contribution is made a statement that the entity made such a contribution and (2) provides such information about the contribution as the Secretary may require.

Section 605(c) of the SECURE 2.0 Act provides that no inference is intended as to the appropriate treatment of contributions made in taxable years ending on or before the date of the SECURE 2.0 Act's enactment (December 29, 2022), or as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7).

On November 20, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-112916-23) in the ***Federal Register*** (88 FR 80910) proposing regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act, including the calculation of relevant basis. On June 28, 2024, the Treasury Department and the IRS finalized these regulations in TD 9999 (89 FR 54284).

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes all significant comments addressing the proposed regulations, and describes and responds to comments concerning: (1) the listed transaction system generally; (2) conservation easements generally; (3) the continued necessity of finalizing these regulations following passage of section 605 of the SECURE 2.0 Act; (4) the elements of the listed transaction identified in these final regulations; and (5) the role of donee organizations under these final regulations.

Comments outside the scope of this rulemaking are not adopted.

I. *Comments Addressing the General Rules of the Listed Transaction System*

Many comments addressed rules that apply generally to any listed transaction. While these comments are outside the scope of this rulemaking, the Treasury Department and the IRS have nonetheless considered these comments in finalizing these regulations.

A. *Requirement to report for currently "open" periods upon identification of a listed transaction*

Several commenters argued that the proposed regulations' listed transaction designation is impermissibly retroactive because taxpayers who previously filed tax returns (or amended tax returns) reflecting their participation in syndicated conservation easement transactions but that did not disclose their participation pursuant to Notice 2017-10 will be required to disclose those transactions once these final regulations are published in the ***Federal Register***. The commenters opined that this so-called retroactive reach of the proposed listed transaction designation is unfair and likely a violation of law under various theories, including that it may be a taking under the Fifth Amendment or constitute involuntary servitude under the Thirteenth Amendment, and that it undermines the purpose of the Administrative Procedure Act's (APA) notice and comment process. Several commenters noted that the Tax Court has not determined whether a listed transaction designation can be applied retroactively; thus, their theory has not been resolved judicially.

The reporting rules for listed transactions are outside the scope of these final regulations, which merely identify a listed transaction. The reporting rules for listed transactions are found in §1.6011-4, which was issued pursuant to notice and comment and finalized most recently in TD 9350 (72 FR 43146), published in 2007 and which is not amended by these final regulations. Section 1.6011-4(e)(2)(i) requires reporting of transactions entered into prior to the publication of guidance identifying a transaction as a listed transaction if the statute of limitations for assessment of tax is still open when the transaction becomes a listed transaction. While the reporting mandated by §1.6011-4 may be with respect to prior periods, the disclosure obligation is itself not retroactive – it is a current reporting obligation. Thus, the comments regarding an impermissible retroactive burden required by §1.6011-4 are without merit.

B. *Determining an "open year"*

Several commenters requested additional guidance on what constitutes an "open year" for purposes of reporting the listed transaction. These commenters opined that the final regulations should not be able to hold open (or re-open) a statute of limitations for a return that was filed before the relevant transaction became a listed transaction. One commenter stated that such a rule would result in taxpayers currently under audit and disputing penalties based on an expired statute of limitations finding one legal basis of their case evaporated, undoing months or years of analysis and evaluation.

Guidance on open years for purposes of applying §1.6011-4 is outside the scope of these final regulations, which merely identify a listed transaction. However, if a taxpayer who is required to disclose a listed transaction for a taxable year for which the statute of limitations has not expired prior to the identification of the listed transaction fails to do so, then the taxpayer's statute of limitations will continue to stay open for that taxable year as provided in section 6501(c)(10) of the Code. Section 6501(c)(10) provides that, if a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2) of the Code) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by the Code with respect to such transaction does not expire before the date that is one year after the earlier of (1) the date the taxpayer provides the required information or (2) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer. Section 301.6501(c)-1(g)(3)(iii) of the Procedure and Administration Regulations (26 CFR part 301), which was issued pursuant to notice and comment and finalized most recently in TD 9718 (80 FR 16973), published in 2015, and which is not amended by these final regulations, provides (1) that the taxable years to which the failure to disclose relates include each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and for which the taxpayer failed to disclose the listed trans-

action as required under section 6011, and (2) if the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable years to which the failure to disclose relates include each taxable year for which the taxpayer participated in the transaction.

Several commenters asked for guidance as to what constitutes an "open" tax year for taxpayers that took the position they were not required to file a Form 8886, *Reportable Transaction Disclosure Statement*, because Notice 2017-10 was invalidated. This requested guidance is also outside the scope of these final regulations for the reasons discussed in the prior paragraph.

C. *Abating section 6707A penalties*

One commenter expressed concern that there are no adequate procedures or policies for abating section 6707A penalties with respect to listed transactions. This comment is outside the scope of these final regulations as the regulations merely identify a listed transaction. The rules concerning section 6707A penalties are found in §301.6707A-1, which was issued pursuant to notice and comment and finalized most recently in TD 9853 (84 FR 11217), published in 2019 and which is not amended by these final regulations.

D. *Material advisors*

The proposed regulations provided no special rules for material advisors. However, the effect of identifying a listed transaction is, in part, to require certain disclosures from material advisors.

One commenter asked that the final regulations provide guidance to appraisers on the application of any material advisor requirements, and suggested that, if an appraiser is engaged after an easement is put in place, the appraiser should not be considered a material advisor.

The requested guidance is outside the scope of these final regulations; however, the Treasury Department and the IRS note that the definition of material advisor is found in §301.6111-3(b), which was issued pursuant to notice and comment and finalized in TD 9351 (72 FR 43157), published in 2007 and which is not amended by these final regulations. A material advisor is a person who makes a "tax statement," as defined in §301.6111-3(b)(2)(ii), and derives gross income in excess of the "threshold amount," as defined in §301.6111-3(b)(3) (generally, $10,000 for listed transactions). Section 301.6111-3 contains no exception for providing advice "after" the transaction is entered into. Section 301.6111-3(b)(4)(i) provides that a person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order): (1) the person provides material aid, assistance, or advice as described in §301.6111-3(b)(2); (2) the person directly or indirectly derives gross income in excess of the threshold amount as described in §301.6111-3(b)(3); and (3) the transaction is entered into by the taxpayer to whom or for whose benefit the person provided the tax statement, or in the case of a tax statement provided to another material advisor, when the transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided a tax statement. Thus, an appraiser that is engaged after an easement is put in place can be a material adviser based on statements or actions after an easement is put in place.

A few commenters argued that the "retroactivity component" to material advisors (due to required disclosures) is impermissible or burdensome. This comment is without merit and outside the scope of these final regulations; however, the Treasury Department and the IRS note that §301.6111-3(b)(4)(iii) provides that, if a transaction that was not a reportable transaction is identified as a listed transaction in published guidance after the occurrence of the events described in §301.6111-3(b)(4)(i), the person will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction. As the resulting obligations imposed are limited to actions the person must take thereafter, the requirement is not retroactive.

II. *Comments Concerning Conservation Easements Generally*

Several commenters addressed aspects of conservation easements that are outside the scope of these final regulations but have nonetheless been considered in adopting these final regulations. This part II of this Summary of Comments and Explanation of Revisions describes and responds to comments relating to: (1) the consistency of these final regulations with the congressional intent to conserve land; (2) overvaluation abuse in abusive syndicated conservation easement transactions; (3) whether disclosure of the listed transactions is needed since taxpayers must file Form 8283, *Noncash Charitable Contributions*; and (4) requests for enforcement data on syndicated conservation easement transactions.

A. *Supporting conservation while combatting abuse*

One commenter noted that abusive syndicated conservation easement transactions are antithetical to the concept of charity that section 170(h) was designed to enable. The Treasury Department and the IRS agree.

However, several commenters opined that identification of syndicated conservation easement transactions as listed transactions is inconsistent with congressional intent to promote conservation. These commenters argued that the proposed regulations disincentivize conservation by increasing the audit risk of taxpayers involved in syndicated conservation easement transactions and that the uncertainty relating to what is considered a "substantially similar" transaction has a chilling effect. These commenters further argued that the proposed regulations go beyond the scope of section 170(h)(7), violate the separation of powers, and are contrary to the priorities of the Administration.

The Treasury Department and the IRS do not agree with the comments criticizing the identification of syndicated conservation easement transactions as listed transactions. Contrary to the commenters' assertions, Congress has made it clear that it is concerned with abusive syndicated conservation easement transactions. *See*, *e.g.*, *Syndicated Conservation-Easement Transactions*, S. Prt. 116-44 (August 2020). The minimal impact on taxpayers who claim legitimate charitable contribution deductions for qualified conservation contributions and who may decide to file a

protective disclosure is far outweighed by the benefit of requiring disclosure for the identified transactions. In addition, combatting abusive tax shelters is a priority for the Federal government.

B. *Valuation abuse*

Several commenters noted that the central problem with abusive syndicated conservation easements is inaccurate, inflated, and flawed appraisals and the associated overvaluation of conservation easements. A few commenters asked that these final regulations be replaced with "meaningful guidance" on valuation or appraisal methodology, including modifications to the rules for qualified appraisals under §1.170A-17 and guidance on how to determine the highest and best use of properties for purposes of easement valuation. One commenter suggested that the IRS litigate fraudulent appraisal practices as an alternative to "questioning the long-standing conservation practices of donee organizations." One commenter suggested establishing an enhanced appraisal process similar to the process the IRS has established for the art community.

Any guidance on valuation is outside the scope of these final regulations, which are limited to identifying a listed transaction. The purpose of these final regulations is to require taxpayers and material advisors to report transactions for which the claimed value of a syndicated conservation easement contribution strongly indicates overvaluation and thus tax avoidance. The Treasury Department and the IRS have challenged and will continue to challenge abusive appraisal practices and overvaluation.

C. *Disclosures*

Some commenters questioned why the IRS needs to identify certain syndicated conservation easements as a listed transaction when contributions of conservation easements are already disclosed on the Form 8283, which contains, among other information, the easement's appraised value, when and how the property was acquired, the donor's cost or adjusted basis, the amount deducted, and the date of the contribution. The commenters noted that the Form 8283 must be prepared completely and accurately because a deduction will be disallowed if any information is missing.

The Form 8283, which is filed as a part of a taxpayer's tax return, does not include all the information contained on Form 8886. It also does not alert the Office of Tax Shelter Analysis to the taxpayer's participation in an abusive transaction, nor does it trigger disclosure and other obligations of material advisors to the transaction. Accordingly, these comments are not adopted.

D. *Requests for enforcement data*

Some commenters, citing to an issue in the remand of *CIC Services, LLC v. IRS*, 592 F. Supp. 3d 677 (E.D. Tenn. 2022), asserted that the proposed regulations are arbitrary and capricious because, in their opinion, the APA requires numerical data on syndicated conservation easement transactions as part of the rationale for identifying a listed transaction. The commenters requested the number of past syndicated conservation easement transactions, the number of syndicated conservation easement transactions challenged, the status and/or outcome of every current syndicated conservation easement challenge, the number of syndicated conservation easement transactions deemed abusive by courts, the dollar amounts involved in syndicated conservation easement transactions, the number of taxpayers affected by syndicated conservation easement transactions, the nature and amount of the contributions involved, the value and acreage of the property conserved by syndicated conservation easement transactions, and the effect of syndicated conservation easement transactions on nature and wildlife.

CIC Services and other authorities do not require the public release of enforcement data, or the other analysis commenters requested, as a part of rulemaking. Section 6011 and the regulations thereunder require that the IRS (1) determine that a transaction is a tax avoidance transaction and (2) identify the transaction as a listed transaction by notice, regulation, or other form of published guidance. The Treasury Department and the IRS have consistently maintained, since the issuance of Notice 2017-10, that certain syndicated conservation easement transactions are tax avoidance transactions and have identified them as such by notice or regulation. An offer to potentially be allocated a charitable contribution deduction that is at least 2.5 times one's investment, likely resulting in a positive after-tax financial benefit from what is supposed to be a charitable contribution, is strongly indicative of a tax avoidance transaction and has been identified by Congress as such. *See, e.g.*, section 170(h)(7). Further, the data requested by commenters is unrelated to whether the identified transactions are tax avoidance transactions.

III. *Comments Regarding the Necessity of These Final Regulations in Light of Section 605 of the SECURE 2.0 Act*

Several commenters questioned the need for the proposed regulations to be adopted as final regulations, given the enactment in December of 2022 of section 605 of the SECURE 2.0 Act, which added section 170(h)(7) to the Code to disallow a deduction for "the vast majority" of the abusive syndicated conservation easement transactions identified in the proposed regulations. Commenters asked that, in light of the legislation, the proposed regulations either be withdrawn or be revised to take a "more surgical approach" that is in accordance with the new statute (and addresses other concerns).

Some of these commenters opined that the proposed regulations were overbroad and inconsistent with congressional intent, in part because the proposed regulations did not include the three exceptions to section 170(h)(7)(A) that Congress included in section 170(h)(7)(C) through (E). These commenters argued that syndicated conservation easement transactions that meet an exception to section 170(h)(7)(A) should also be excepted from the definition of the listed transaction identified in the proposed regulations.

Other commenters supported adopting final regulations to help the IRS identify promoters, material advisors, and donee organizations involved in abusive syndicated conservation easement transactions. The commenters noted that section 605 of the SECURE 2.0 Act is prospective only. These commenters, however, suggested a

few modifications to the proposed rules, which are discussed later in this part III and in part IV of this Summary of Comments and Explanation of Revisions.

The Treasury Department and the IRS have concluded that it is in the interest of sound tax administration to continue to identify abusive syndicated conservation easement transactions as listed transactions, notwithstanding passage of section 605 of the SECURE 2.0 Act. However, in adopting the proposed regulations as final regulations, the Treasury Department and the IRS have made several modifications to the proposed rules, as described in this Summary of Comments and Explanation of Revisions. Thus, these final regulations are consistent with the commenters' recommendation that the final regulations take "a more surgical approach" to the definition of the syndicated conservation easement listed transaction following the enactment of section 170(h)(7).

Specifically, these final regulations cover three major classes of abusive syndicated conservation easement transactions (and substantially similar transactions): (1) those that involve contributions occurring before December 30, 2022; (2) those for which a charitable contribution deduction is not automatically disallowed by section 170(h)(7); and (3) those that substitute the contribution of a fee simple interest in real property for the contribution of a conservation easement.

A. *Transactions occurring before December 30, 2022*

Section 170(h)(7)(A) does not apply to contributions made on or before December 29, 2022. As a result, these final regulations are necessary to obtain reporting of transactions that are the same as, or substantially similar to, syndicated conservation easement transactions in cases in which the conservation easements were contributed before December 30, 2022, and the taxpayers did not disclose the transaction pursuant to Notice 2017-10. Thus, these final regulations impose reporting requirements on taxpayers who had not previously disclosed their participation in transactions that are the same as, or substantially similar to, syndicated conservation easement transactions to the extent that a taxpayer's participation in the transaction occurred in one or more taxable years as to which the statute of limitations had not run as of the date these final regulations identify the transaction as a listed transaction.

Some commenters contended that, since many taxpayers have already reported their transactions under Notice 2017-10, the IRS already has the information reporting targeted by the proposed regulations. The Treasury Department and the IRS agree that, in such cases, duplicative reporting under these final regulations is unnecessary. Accordingly, these final regulations explicitly provide that taxpayers who fully disclosed their participation in syndicated conservation easement transactions pursuant to Notice 2017-10 do not need to disclose again under these final regulations for any taxable years covered by the prior disclosure.

B. *Transactions not automatically disallowed by section 170(h)(7)*

The final regulations do not include an exception for transactions that are excluded from the automatic disallowance rule in section 170(h)(7). Of note, the SECURE 2.0 Act, which was enacted after the proposed regulations were issued, does not provide that the exceptions to section 170(h)(7)(A) contained in section 170(h)(7)(C) through (E) are also exceptions for purposes of the listed transaction rules. To the contrary, section 605(c)(2) of the SECURE 2.0 Act explicitly states: "No inference is intended as to the appropriate treatment of …any contribution for which a deduction is not disallowed by reason of section 170(h)(7) of the Internal Revenue Code of 1986, as added by this section." Thus, Congress has indicated that the fact that such transactions are not automatically disallowed does not mean that such transactions could not be abusive.

There are at least two types of conservation easement transactions for which a charitable contribution deduction is not automatically disallowed by section 170(h)(7) that are appropriately considered listed transactions. First, transactions satisfying any of the three exceptions found in section 170(h)(7)(C) through (E) that also contain all the elements of a transaction identified as a listed transaction under these final regulations continue to be transactions that the Treasury Department and the IRS view as likely to be abusive. Thus, the final regulations do not include any exceptions for transactions described in section 170(h)(7)(C) through (E).

Second, any syndicated conservation easement transaction for which a charitable contribution deduction is not automatically disallowed by section 170(h)(7) because the amount of the partnership's contribution does not exceed 2.5 times the sum of each partner's relevant basis in the partnership is nevertheless a listed transaction with respect to any partner who received promotional materials offering the possibility of being allocated a share of the contribution that equals or exceeds 2.5 times that partner's investment.

C. *Transactions that involve other contributions of real property*

The preamble to the proposed regulations stated that transactions in which the contributed property is described in section 170(h)(2)(A) or (B), or is a fee interest in real property, are transactions substantially similar to the listed transaction identified in proposed §1.6011-9(b). Several commenters noted that this language appears to imply that any transaction that meets the elements of the listed transaction identified in the proposed regulations, but that consists of the contribution of real property, is substantially similar to the listed transaction identified in the proposed regulations.

One commenter supported the inclusion of fee simple contributions in the preamble to the proposed regulations and asked that fee simple transactions be expressly identified in the regulatory text of the final regulations. Another commenter asked that the final regulations "clarify" whether fee simple contributions are considered substantially similar to syndicated conservation easement transactions, stating that "the preamble language is not law." However, several other commenters questioned why contributions of fee simple interests in property would be considered transactions that are substantially similar to the syndicated conservation easement transaction identified in the proposed regulations. One commenter contended that the tax consequences, specifically taxpayer

contribution base limitations and carryover periods, are different for fee simple contributions and conservation easement contributions.

The Treasury Department and IRS continue to believe that a transaction that meets the elements of the listed transaction identified in these final regulations, but consists of the contribution of a fee simple interest rather than of a conservation easement, is substantially similar to the listed transaction identified in these final regulations. The commenters questioning the treatment of contributions of fee simple interests as substantially similar transactions failed to address the broad definition of substantially similar found in §1.6011-4(c)(4), which was issued after notice and comment; that Congress specifically adopted the term "substantially similar" in its subsequent enactment of section 6707A(c)(2); and that Congress specifically referenced the definition in §1.6011-4(c)(4) when explaining that provision. *See* Footnote 232 of House Report 108-548(I), 108th Cong., 2nd Sess. 2004, at 261 (June 16, 2004) (House Report) (emphasis added):

> The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. *For this purpose, it is expected that the definition of "substantially similar" will be the definition used in Treas. Reg. sec. 1.6011–4(c)(4).* However, the Secretary may modify this definition (as well as the definitions of "listed transaction" and "reportable transactions") as appropriate.

In particular, despite the differing taxpayer contribution base limitations and carryover periods between a fee simple donation and a conservation easement donation, the transactions can result in similar types of tax consequences and be either factually similar or based on the same or a similar tax strategy.

In sum, the Treasury Department and the IRS agree that any contribution of real property (including contributions of fee simple interests and contributions described in section 170(h)(2)(A) or (B)) that meets the elements of the listed transaction identified in the proposed regulations is a transaction that is substantially similar to the listed transaction identified in the proposed regulations. Accordingly, §1.6011-9(c)(7) of these final regulations explicitly states that a transaction that meets all the elements described in §1.6011-9(b), except that the transaction involves the contribution of a fee simple interest or the contribution of a real property interest described in section 170(h)(2)(A) or (B) instead of a conservation easement, is substantially similar (within the meaning of §1.6011-4(c)(4)) to the transaction described in §1.6011-9(b). The final regulations contain an example showing a transaction involving the contribution of a fee simple interest that is substantially similar to the transaction described in §1.6011-9(b).

D. *Other substantially similar transactions*

Multiple commenters raised general concerns about the potential scope of transactions that are "substantially similar" to the listed transaction identified in the proposed regulations. Several of those commenters opined that the substantially similar rule is void for vagueness or overbroad, and some commenters requested that the term be made more specific. Several commenters asked whether the 2.5 times rule in proposed §1.6011-9(b)(1) is a bright-line rule; in other words, whether transactions for which the highest estimate of charitable contribution deduction in the promotional materials is less than 2.5 times a taxpayer's investment could be substantially similar to the listed transaction identified in these regulations.

As previously discussed, the term "substantially similar" is part of the statutory definition of a listed transaction in section 6707A(c)(2); furthermore, the regulatory definition found in §1.6011-4(c)(4) was adopted after notice and comment and has been viewed favorably by Congress. Under §1.6011-4(c)(4), whether a transaction is "substantially similar" to a syndicated conservation easement transaction depends on the tax consequences, the tax strategy, and other facts and circumstances related to the transaction. Section 1.6011-4(c)(4) further provides that the term substantially similar must be broadly construed in favor of disclosure.

The "substantially similar" rule provides an important backstop against advisors' and promoters' attempts to avoid the reporting requirements. Consistent with that objective, these final regulations generally do not circumscribe the types of transactions that may be substantially similar to the listed transaction identified in these final regulations. Nonetheless, as discussed in part IV.A.3. of this Summary of Comments and Explanation of Revisions, these final regulations do provide that the 2.5 times rule is a bright-line rule. Thus, transactions in which the promotional materials offer investors the possibility of being allocated a charitable contribution deduction of anything less than 2.5 times a taxpayer's investment generally are not substantially similar to the listed transaction identified in these final regulations. However, if the taxpayer is nonetheless allocated a charitable contribution deduction that equals or exceeds 2.5 times the taxpayer's investment, the rebuttable presumption in §1.6011-9(d)(3) would apply.

Several commenters asked whether transactions that involve contributions other than real property, such as those that involve contributions of artwork or other non-cash items, are listed transactions. The Treasury Department and the IRS have determined that such transactions are not "substantially similar" for purposes of these final regulations because this listed transaction relates to contributions of real property, not of personal property. The Treasury Department and the IRS will continue to evaluate whether the transactions raised by commenters are tax avoidance transactions and may propose to identify such transactions as listed transactions in future guidance.

A few commenters asked whether transactions that do not involve a contribution by a pass-through entity (such as a transaction involving a contribution by an individual or a corporation) are "substantially similar" transactions. The Treasury Department and the IRS have determined that transactions that do not involve a contribution by a pass-through entity are not considered substantially similar transactions; however, these transactions like-

wise could be proposed to be identified as tax avoidance transactions in future guidance.

One commenter asked whether transactions that involve deductions other than under section 170 (that is, transactions involving the "use of different Code provisions"), are considered "substantially similar" to the syndicated conservation easement transaction identified in the proposed regulations. It is possible that a pass-through entity could use a deduction other than allowed under section 170 to obtain the same or a similar type of tax consequences, and that such transaction would either be factually similar or based on the same or similar tax strategy to the listed transaction identified in these final regulations. Therefore, the Treasury Department and IRS conclude it is possible that a transaction that abuses the application of a section of the Code other than section 170, for example, section 642(c), could be a substantially similar transaction. Under §1.6011-4(f)(1), taxpayers who are uncertain whether a particular transaction is substantially similar to a syndicated conservation easement transaction may request a private letter ruling from the IRS.

Several commenters expressed concern that, given the uncertainty about whether a particular transaction would be substantially similar to a listed transaction, the regulations could have a chilling effect on the willingness of qualified organizations to accept contributions of conservation easements if the section 4965 carveout were eliminated in the final regulations. As described in part V of this Summary of Comments and Explanation of Revisions, these final regulations maintain the section 4965 carveout for qualified organizations, which addresses those concerns.

IV. *Comments Regarding Elements of the Listed Transaction Identified in the Proposed Regulations*

Several comments focused on the elements of the listed transaction identified in the proposed regulations. This part IV describes and responds to these comments, specifically comments regarding (1) the 2.5 times rule; (2) application of the 2.5 times rule; (3) timing rules; and (4) definitions.

A. *The 2.5 times rule*

Commenters addressed the rationale for the 2.5 times multiple, interaction with the 2.5 times rule in section 170(h)(7), and whether 2.5 times is a bright line.

1. *Rationale for the 2.5 times multiple*

Several commenters questioned the rationale for the 2.5 times multiple in the proposed regulations. Some commenters argued that, depending on the top marginal tax rate, a 2.5 times multiple would result in minimal, if any, tax benefit to the investor. One commenter opined that, because there is no explanation for how the multiple was determined, there is no way to determine whether this criterion is reasonable.

The Treasury Department and the IRS have concluded, consistent with Notice 2017-10, that once a transaction offers the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the amount of the taxpayer's investment, the transaction is a tax avoidance transaction that justifies a reporting obligation. At this 2.5 times threshold, a taxpayer in the highest current marginal tax bracket claiming a charitable contribution deduction for a qualified conservation contribution will approximately break even before considering State tax benefits, and, for any amounts above 2.5 times, will have an economic gain directly from making the charitable contribution deduction. This multiple is also aligned with the 2.5 times threshold established by Congress in section 605 of the SECURE 2.0 Act, which disallows certain deductions at the partnership level for contributions exceeding 2.5 times the sum of each partner's relevant basis. Thus, the Treasury Department and the IRS conclude that it is reasonable and in the sound interest of tax administration to adopt the 2.5 times threshold as proposed.

2. *Interaction with the 2.5 times rule in section 170(h)(7)*

Several commenters addressed the interaction of the 2.5 times rule with section 170(h)(7) and asked whether only transactions in which the charitable contribution deduction promised in the promotional materials is exactly 2.5 times the investment need to be disclosed (because transactions in which the deduction amount exceeds 2.5 times the investment are generally disallowed by section 170(h)(7)). Under these final regulations, both transactions in which the charitable contribution deduction promised in the promotional materials is exactly 2.5 times the investment and transactions in which the charitable contribution deduction promised in the promotional materials exceeds 2.5 times the investment must be disclosed.

As discussed in part III of this Summary of Comments and Explanation of Revisions, certain transactions for which a deduction is not disallowed by section 170(h)(7) are nevertheless considered listed transactions.

3. *Whether 2.5 times is a bright line*

As noted in part III.D. of this Summary of Comments and Explanation of Revisions, several commenters asked whether 2.5 times is a bright line; in other words, whether transactions for which the highest estimate of charitable contribution deduction in the promotional materials is less than 2.5 times a taxpayer's investment could be considered substantially similar transactions. One of these commenters encouraged the IRS to clarify that the 2.5 times rule is not intended to create or imply a safe harbor for excessive valuations below the 2.5 times threshold and that the 2.5 times rule does not implicitly approve charitable contribution deduction amounts less than 2.5 times a taxpayer's investment. This commenter noted that, regardless of whether a contribution is a listed transaction pursuant to §1.6011-4(b)(2), it remains subject to all the relevant requirements of law, including those regarding valuation and substantiation of that valuation by means of a qualified appraisal by a qualified appraiser pursuant to §1.170A-17 that is subject to review by the IRS for its accuracy. A few commenters asked the IRS to pick an actual number (for example, 2.0, 2.25, 2.45, or 2.49 times) at which a transaction will incur greater IRS scrutiny.

The Treasury Department and the IRS agree that taxpayers need some certainty

on which transactions need to be disclosed to the IRS. The Treasury Department and the IRS have determined that a transaction in which the promotional materials offer the taxpayer the possibility of being allocated a charitable contribution deduction of only an amount less than 2.5 times the taxpayer's investment and for which the taxpayer is actually allocated a charitable contribution deduction of an amount less than 2.5 times the taxpayer's investment (so that the rebuttable presumption in §1.6011-9(d)(3) does not apply) generally is not "substantially similar" to the listed transaction identified in these final regulations. This determination takes into account both the need for taxpayer certainty on reporting obligations and the possibility of being allocated a charitable contribution deduction the amount of which is less than 2.5 times the amount of the taxpayer's investment presents less risk of the type of net-positive financial benefit to investors that exists at and above the 2.5 times threshold. This bright-line rule does not imply that valuations giving rise to an amount less than 2.5 times a taxpayer's investment are properly valued. The Treasury Department and the IRS agree with the commenter that, regardless of whether a contribution is a reportable transaction pursuant to §1.6011-4, it remains subject to all the relevant requirements of law. For example, a claimed charitable contribution deduction amount that is 2.0 times the partner's investment may still be overvalued or unsubstantiated, and the valuation remains subject to review by the IRS for accuracy.

In view of the foregoing, these final regulations add new §1.6011-9(d)(1) to state that the 2.5 times threshold is a bright line. However, this new rule also provides that, if a pass-through entity engages in a series of transactions (for example, contribution of an easement followed by contribution of a fee simple interest) with a principal purpose of avoiding the application of this bright-line rule, the series of transactions may be disregarded, or the arrangement may be recharacterized in accordance with its substance. Whether a series of transactions has a principal purpose of avoiding the application of this bright-line rule is determined based on all the facts and circumstances.

B. *Application of the 2.5 times rule*

The proposed regulations contained three rules to address potential avoidance of the 2.5 times rule. Taxpayers commented on each of these rules.

1. *Multiple suggested deduction amounts*

The proposed regulations contained a rule that, if the promotional materials suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied deduction amount will determine whether the 2.5 times rule is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) suggests or implies a higher charitable contribution deduction amount than suggested or implied by other promotional materials, then the highest suggested charitable contribution deduction amount determines whether the 2.5 times rule is met. As the preamble to the proposed regulations explained, this rule is intended to prevent promoters from circumventing the 2.5 times rule by having promotional materials contain language that is inconsistent as to the amount of the potential charitable contribution deduction.

One commenter stated that the proposed rule "does not apply to ambiguities in the taxpayer's materials, it allows the Treasury to create ambiguities in the taxpayer's materials." However, another commenter asked whether a transaction that meets the elements of the listed transaction identified in the proposed regulations, except that the partnership merely promises that the investment will "grow by" 2.5 times without mentioning a charitable contribution deduction, is considered a "substantially similar" transaction. The intent of the rule is to prevent promoters from circumventing the 2.5 times rule by creating ambiguous promotional materials, and the transaction described in the preceding sentence would be a substantially similar transaction. Thus, these final regulations adopt the rule as proposed.

2. *Rebuttable presumption*

The proposed regulations included a rebuttable presumption deeming the 2.5 times rule to be met if (1) the pass-through entity donates a conservation easement within three years following a taxpayer's investment in the pass-through entity, (2) the pass-through entity allocates a charitable contribution deduction to the taxpayer the amount of which equals or exceeds two and one-half times the amount of the taxpayer's investment, and (3) the taxpayer claims a deduction the amount of which equals or exceeds two and one-half times the amount of the taxpayer's investment. The proposed regulations provided that this presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

Several commenters objected to the rebuttable presumption rule, stating that it is "arbitrary and capricious;" that taxpayers cannot prove a negative (particularly with respect to oral representations); that any attempt to prove in court that oral representations were not made is hearsay; that the regulations do not speak to how a taxpayer is able to rebut the presumption; that it seems to be attempting to switch the penalty burden from the IRS to taxpayers; and that the IRS has demonstrated to taxpayers that it will neither be fair nor listen to reasonable evidence in syndicated conservation easement tax disputes. Commenters asked for guidance on how taxpayers may be able to rebut the rebuttable presumption.

The Treasury Department and the IRS conclude that the rebuttable presumption is reasonable because it is unlikely that a taxpayer would claim a deduction for 250 percent of their investment in a pass-through entity within three years of making that investment and not have received promotional materials offering the possibility to do so. This presumption is needed to address transactions with respect to which taxpayers and promoters are not forthcoming about the content or receipt of the promotional materials. While the Treasury Department and the IRS decline to provide a specific method to rebut the presumption in these final

regulations because such rebuttal would necessarily be dependent on the taxpayer's specific facts and circumstances, the Treasury Department and the IRS expect that, in appropriate cases, taxpayers will be able to establish to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity. For example, a taxpayer may be able to rebut the presumption by establishing that the partnership was not open to other investors (and thus the only promotional materials were documents needed to execute the transaction) or that similar properties in the same area had increased significantly in value in the period between the time the taxpayer invested in the partnership and the date the conservation easement was contributed.

Contrary to commenters' assertions, nothing in the proposed regulations suggested that the Commissioner will disregard evidence rebutting the presumption. Section 7803(a)(3)(D) and (J) of the Code require the Commissioner to ensure that employees of the IRS are familiar, and act in accordance, with taxpayer rights, including the right to challenge the position of the IRS, the right to be heard, and the right to a fair and just tax system. Furthermore, the phrase "to the satisfaction of the Commissioner" does not preclude future judicial review, and the Commissioner bears the burden of demonstrating that each of the other elements of the listed transaction has been fulfilled and may have the burden of production under section 7491(c) of the Code in a court proceeding regarding the imposition of a penalty, depending on the party against whom it is asserted. In the view of the Treasury Department and the IRS, evidence regarding oral promotional materials generally would not constitute inadmissible hearsay because the oral promotional materials would not be offered for the truth of the matters asserted therein, but rather as evidence of what was stated. *See* Fed. R. Evid. 801(c)(2).

Some commenters asked whether the rebuttable presumption implies that taxpayers do not need to report if (1) at least three years have passed between the taxpayer's investment in the pass-through entity and the pass-through's contribution of a conservation easement or (2) if the deduction amount is less than 2.5 times the amount of an investor's investment. The rebuttable presumption does not carry either of these implications.

The Treasury Department and the IRS have decided to retain the rebuttable presumption in the final regulations because the administrative need for a rebuttable presumption outweighs the concerns raised by the commenters. Taxpayers and promoters are the persons with access to and knowledge of the promotional materials involved in their transactions. Taxpayers should not be able to escape the requirements of these final regulations because their syndicators were effective in masking their promises. Accordingly, the final regulations retain the rebuttable presumption rule.

3. *Determining the amount of a taxpayer's investment in the pass-through entity*

The proposed regulations contained an anti-stuffing rule providing that, for purposes of determining whether a transaction is a listed transaction, the amount of a taxpayer's investment in the pass-through entity is limited to the portion of the taxpayer's investment that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction.

A few commenters noted that the term "investment" in proposed §1.6011-9(b)(1) is not defined, while one commenter stated that the anti-stuffing rule found in proposed §1.6011-9(d)(3) provides the taxpayer's investment for purposes of the 2.5 times rule. Several commenters stated that the anti-stuffing rule in the proposed regulations is inconsistent with the relevant basis rule in section 170(h)(7)(B), and others suggested that the anti-stuffing rule in the proposed regulations should be replaced with the relevant basis rule in section 170(h)(7)(B).

The Treasury Department and the IRS note that the term "investment" is not generally defined within the Code. However, the Treasury Department and the IRS agree with the commenter stating that the anti-stuffing rule found in proposed §1.6011-9(d)(3) provides the taxpayer's investment for purposes of the 2.5 times rule. Further, in response to comments that relevant basis should also be permitted to be used to determine investment, these final regulations provide that a taxpayer may determine the amount of their investment in the pass-through entity using one of the methods provided in §1.6011-9(d)(4), which identifies the anti-stuffing method and, for contributions occurring on or after December 30, 2022, adds the relevant basis method in section 170(h)(7)(B) as another method to determine the amount of the taxpayer's investment in the pass-through entity. No other methods may be used.

In response to commenters asserting that relevant basis should replace the anti-stuffing rule, the relevant basis computations under section 170(h)(7) do not apply to all transactions for which disclosure is required under these final regulations (such as to contributions before the effective date of section 170(h)(7) in taxable years for which the statute of limitations is still open); thus, these final regulations retain the anti-stuffing method as one method to determine investment for purposes of the 2.5 times rule.

i. *Anti-stuffing method*

As mentioned before in part IV.B.3 of this Summary of Comments and Explanation of Revisions, several commenters addressed the anti-stuffing rule found in the proposed regulations, which these final regulations rename the "anti-stuffing method" to determine investment for purposes of the 2.5 times rule. For example, one commenter requested clarification on how to determine the portion of the investment that is "attributable" to the real property on which the conservation easement is placed. Another commenter stated that the proposed anti-stuffing rule may give rise to constitutional challenges because it requires the separation of investment assets, creating more cost for investment managers and for investors, which they contended is a limitation on interstate commerce, a power reserved only for the legislative branch. One commenter opined that the anti-stuffing rule will be impos-

sible to apply in practice; the commenter noted that the example of the anti-stuffing rule in the proposed regulations involved marketable securities with an identifiable fair market value and questioned how to apply the anti-stuffing rule if the pass-through entity holds multiple pieces of property. Another commenter stated that the example in the proposed regulations illustrating the anti-stuffing rule was merely an example of the basis allocation rules under section 755 of the Code and that allocation rules under section 755 do not require additional explanation.

The Treasury Department and the IRS conclude that the anti-stuffing rule provides a reasonable method to determine the taxpayer's investment in the pass-through entity by looking only to amounts attributable to the property generating the charitable contribution deduction. In response to comments requesting additional guidance on the determination of the amount of a taxpayer's investment, these final regulations provide that, under the anti-stuffing method, if an investor uses non-cash assets to acquire its interest in the pass-through entity, then the fair market value of such assets, rather than their basis, is the relevant measure. In particular, under §1.6011-9(d)(4)(ii) of these final regulations, the amount of a taxpayer's investment in the pass-through entity is the portion of the cash and fair market value of the assets the taxpayer uses to acquire its interest in the pass-through entity that is attributable to the real property on which a conservation easement is placed (or the portion thereof, if an easement is placed on a portion of the real property) and that produces the charitable contribution deduction described in §1.6011-9(b)(3).

The Treasury Department and the IRS disagree that the anti-stuffing rule is impossible to apply in practice. Syndicated conservation easement transactions often involve scenarios similar to the example provided in the proposed regulations, in which the pass-through entity owns only cash and marketable securities in addition to its real property. Moreover, these regulations apply to transactions in which the promotional materials offer the possibility of charitable contribution deductions, and thus the parties involved will have necessarily considered the possible allocation of charitable contribution deductions based on the taxpayer's cost of acquiring the interest in the pass-through entity. Accordingly, in the view of the Treasury Department and the IRS, it is not unduly burdensome to require the parties to determine the amount of the taxpayer's acquisition cost that is allocable to the property giving rise to the charitable contribution deduction that is being offered.

ii. *Relevant basis method*

The Treasury Department and the IRS recognize that partnerships and S corporations that engage in syndicated conservation easement transactions occurring on or after December 30, 2022, will need to calculate relevant basis for purposes of section 170(f)(19), and, in addition, each investor will need to calculate the amount of the investor's investment for purposes of these listed transaction regulations. To mitigate the burden of potentially duplicative calculations, these final regulations add an alternative method to determine the amount of a taxpayer's investment. These final regulations provide that, for contributions occurring on or after December 30, 2022, taxpayers may use their relevant basis, as determined under section 170(h)(7)(B) and the regulations thereunder, as the amount of their investment for purposes of §1.6011-9(b)(1).

4. *Modification of the determination of investment for qualified conservation contributions protecting historic structures*

One commenter stated that the proposed anti-stuffing rule did not adequately consider the difference between qualified conservation contributions protecting historic structures and those protecting natural open space or settings. This commenter stated that, because historic preservation projects protect the historic character of a building, they often require additional investment for rehabilitation; however, the proposed rule did not consider cash raised for, and invested into, the preservation, rehabilitation and maintenance of certified historic structures in the calculation of the investment. The commenter further stated that the proposed regulations did not account for additional monies that need to be invested in a project after an easement is placed to ensure that the conservation purpose is protected in perpetuity. The commenter stated that cash, if invested in the real property, should be considered part of the taxpayer's investment in the real property when applying the 2.5 times rule.

The Treasury Department and the IRS conclude that the commenter's proposed changes to the anti-stuffing method are not warranted. In general, one key element in determining whether a transaction constitutes a syndicated conservation easement listed transaction is the ratio of the amount of the charitable contribution deduction allocation that an investor is offered to the amount the investor pays to obtain that charitable contribution deduction allocation. To that end, the anti-stuffing method measures the amount of the taxpayer's cost of acquiring the interest in the pass-through entity that is attributable to the real property on which a conservation easement is placed (or the portion thereof, if an easement is placed on a portion of the real property) and that gives rise to the charitable contribution deduction. Charitable contribution deductions are based on either the fair market value or adjusted basis of the property that is contributed as of the time of the contribution. *See*, *e.g.*, section 170(e). Therefore, in the view of the Treasury Department and the IRS, it is inappropriate, in determining the amount of a taxpayer's investment, to look to the amounts expended on the property after the time of the charitable contribution.

In general, every taxpayer that contributes a conservation easement will be required to expend some amounts on the property after the contribution, such as for property taxes. However, amounts of cash that are held for expenditures after the date the conservation easement is contributed, whether for property taxes, repairs, or anything else related to the property, are not as directly related to the resultant charitable contribution deduction that a taxpayer claims as the expenditures related to the property that precede the conservation easement contribution. The Treasury Department and the IRS have concluded that it is appropriate for the anti-stuffing method to maintain its focus on the amounts invested in the property giving rise to the deduction as of the time of the charitable contribution. In

addition, the Treasury Department and the IRS have concluded that a rule that treats certain cash holdings as attributable to the real property if they are "earmarked" for future expenditures related to the property would be difficult to administer. Such a rule would require factually intensive estimations and projections about the amount of future expenditures that would be necessary to fulfill the purposes of the conservation easement (as opposed to merely enhancing the value of the building). For these reasons, the Treasury Department and the IRS have concluded that the final regulations should not adopt this comment. Therefore, the final regulations add a clarification to §1.6011-9(d)(4)(ii), which states that assets retained to pay for costs related to the operation and maintenance of the real property on which the conservation easement is placed, including costs that may be incurred in future years, are not attributable to the contributed real property.

The Treasury Department and the IRS will continue to consider whether any additional clarifications or modifications to the anti-stuffing method or the alternative relevant basis method of determining the amount of the taxpayer's investment in the pass-through entity would be beneficial in the context of qualified conservation contributions protecting historic structures.

C. *Timing rules*

Comments addressed both the timing of the pass-through entity's acquisition of the real property and whether holding the real property for a period of time before the contribution of the conservation easement is made should result in the transaction being excluded from the listed transaction identified in these regulations.

1. *Timing of the pass-through entity's acquisition of the real property*

Proposed §1.6011-9(b)(2) provided that one of the steps of a syndicated conservation easement is that the taxpayer acquires an interest directly, or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, becomes an investor in the entity). A few commenters asked whether this step is met with respect to investors who acquire an interest in an entity that does not hold real estate at the time the interest in the pass-through entity is acquired. One of these commenters requested that the IRS clearly state if it intends proposed §1.6011-9(b)(2) to be met in the case of an investor who acquires an interest in a pass-through entity that subsequently acquires real estate or an interest in a pass-through entity holding real estate. The commenter also stated that, if the real property is purchased after the investor invests in the pass-through entity, the transaction would fall outside of the anti-stuffing rule and therefore would be less likely to trigger the 2.5 times rule (because the amount of the taxpayer's investment would never be reduced by the anti-stuffing rule).

The Treasury Department and the IRS note that the proposed regulations clearly stated that the transaction falls within the definition of a syndicated conservation easement transaction "regardless of the order" in which the steps occur; therefore, the proposed regulations already encompassed the scenario in which a taxpayer acquires an interest in the pass-through entity before the pass-through entity acquires the real property. However, for additional clarity, these final regulations make that point explicit in §1.6011-9(b)(2).

The Treasury Department and the IRS do not agree with the commenter that, if the real property is purchased after the investor invests in the pass-through entity, the transaction falls outside of the reach of the anti-stuffing method. The proposed and final regulations specifically provide that the order in which the four steps of a syndicated conservation easement transaction occur is not relevant. In response to this comment, an example in these final regulations illustrates the application of the anti-stuffing method if the pass-through entity acquires the real property after a taxpayer invests in the pass-through entity.

2. *Holding periods*

The proposed regulations did not contain any exceptions from the disclosure requirements for property held on a long-term basis. Several commenters asked that the final regulations include an exception for such transactions. One commenter questioned why investors who have held interests in a pass-through entity for over one year would be required to report the syndicated conservation easement transaction because such investors would not need to rely on a tacked holding period to avoid the limitations of section 170(e). One commenter contended that contributions of land held for less than three years will generally not be made. Several commenters observed that contributions with a long-term holding period are excepted from the disallowance rule of section 170(h)(7)(A) pursuant to section 170(h)(7)(C). One commenter opined that a hypothetical transaction in which the promotional materials state that the property will be worth more than 2.5 times the taxpayer's investment in ten years should not give rise to a listed transaction. This commenter asked that the final regulations specify the amount of time that must elapse between the purchase of the property interest and the contribution of the easement for a transaction to be listed. Another commenter asked about a taxpayer that inherited land that is then in his possession for over twenty years and decides to donate the land for the benefit and protection of the environment.

The Treasury Department and the IRS conclude that it is not necessary to modify the proposed rules to provide an exception for property that has been held for a period of time. First, tax abuse in syndicated conservation easement transactions is not limited to mismatches between an investor's holding period in its interest in the pass-through entity and the pass-through entity's holding period in the real property on which the conservation easement is placed. For example, even for transactions in which investors may otherwise be eligible to claim a deduction of the fair market value of the conservation easement, the deduction is nonetheless abusive if the easement is improperly overvalued.

Second, as discussed in part III.B. of this Summary of Comments and Explanation of Revisions, the exception to the disallowance rule in section 170(h)(7) for contributions outside of a three-year holding period does not necessitate a similar exception in these final regulations, and

these final regulations do not provide an exception for syndicated conservation easements that are described in section 170(h)(7)(C).

Third, notwithstanding the commonly anticipated appreciation of real property values over time, it is not the case that property values always increase. The period a property is held is one element of a fact-intensive inquiry into whether the property has been overvalued. Attempting to craft an exception based on a holding period would result in a rule that is over-inclusive and/or under-inclusive, depending on the specific facts. The proposed hypotheticals for property held for ten or twenty years seems unlikely to meet all elements of the listed transaction identified in these regulations (for example, it might not be held in a pass-through entity or involve promotional materials). Therefore, the final regulations do not include an exception for long-term holding periods.

D. *Definitions*

Commenters addressed the definitions of (1) charitable contribution deduction, (2) conservation easement, (3) participant, (4) promotional materials, and (5) syndicated conservation easement transaction.

1. *Charitable contribution deduction*

The proposed regulations defined "charitable contribution deduction" as "a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1)."

One commenter stated that this definition is inconsistent with the listed transaction identified in the proposed regulations, which is limited to contributions of conservation easements. This commenter suggested that the definition should be limited to "the deduction arising from a qualified conservation contribution as defined in section 170(h)(1)."

The Treasury Department and the IRS decline to adopt this suggestion, because some substantially similar transactions will involve real property contributions other than qualified conservation contributions.

2. *Conservation easement*

The proposed regulations defined a "conservation easement" as "a restriction, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and section 170(h)(4), granted in perpetuity, on the use that may be made of the specified property." One commenter stated that, in all cases that the commenter defended, the IRS had taken the position that the conservation easement did not meet one or more of the requirements in this definition. The commenter opined that, if an investor fails to disclose a syndicated conservation easement transaction, the pass-through's return is selected for audit, and the IRS determines that the donated conservation easement fails to meet one or more elements of the definition in the proposed regulations, then the investor would not have had any reporting obligation because the investor had not claimed a deduction for a "conservation easement" as that term was defined in the proposed regulations. The commenter added that if this was not the intent of the proposed regulation, then the final regulation should clearly so state.

The Treasury Department and the IRS note that the third element of the listed transaction identified in these regulations is that "the pass-through entity that owns the real property contributes an easement on such real property, *which it treats as a conservation easement*, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer" (emphasis added), and that the fourth element of the listed transaction is that "the taxpayer claims a charitable contribution deduction with respect to the contribution of the real property interest on the taxpayer's Federal income tax return." In the commenter's hypothetical, the taxpayer's treatment of the contribution as a conservation easement and claim of a charitable contribution deduction with respect to the conservation easement makes the transaction a listed transaction. Whether the IRS asserts that the conservation easement is invalid and whether the charitable contribution deduction claimed on the taxpayer's Federal income tax return is ultimately allowed do not affect this outcome.

To more clearly track the language in section 170(h), the final regulations modify the definition of conservation easement to provide that it is a restriction (granted in perpetuity) on the use that may be made of the real property, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and (h)(4).

3. *Participant*

The proposed regulations stated that a taxpayer participating, within the meaning of §1.6011-4(c)(3)(i)(A), in a syndicated conservation easement transaction described in proposed §1.6011-9(b) includes (1) an owner of a pass-through entity, (2) a pass-through entity (any tier, if multiple tiers are involved in the transaction), and (3) any other taxpayer whose tax return reflects tax consequences or a tax strategy arising from the syndicated conservation easement transaction described in the proposed regulations. The proposed regulations provided, consistent with Notice 2017-10, that a qualified organization to which a syndicated conservation easement described in proposed §1.6011-9(b) is donated is not treated as a participant under §1.6011-4(c)(3)(i)(A) with respect to the listed transaction.

One commenter stated that it is unclear whether a participant who reports the tax consequences of a transaction that is substantially similar to a syndicated conservation easement transaction is a member of the class of participants described under proposed §1.6011-9(e)(2). The commenter opined that the plain language of the proposed regulation referred only to taxpayers who have the tax consequences of a syndicated conservation easement transaction. To address this comment, the final regulations clarify that the class of participants includes participants in transactions that are the same as, or substantially similar to, syndicated conservation easement transactions.

One commenter requested additional guidance on the meaning of the term "arising from" in proposed §1.6011-9(e)(2)(iii), stating that it is ambiguous whether an IRS attorney that was hired to enforce syndicated conservation easement trans-

actions would be required to report the transaction because his or her income "arose from" the conservation easement transaction. The Treasury Department and the IRS conclude that further clarification is not needed.

4. *Promotional materials*

The proposed regulations stated that "promotional materials" include materials described in §301.6112-1(b)(3)(iii)(B) and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

One commenter supported this definition, but several commenters thought it was overbroad, stating that it would be effectively impossible for a taxpayer to prove that he or she did not receive promotional materials. Some commenters objected to particular types of communication being included within the scope of promotional materials. Specifically, commenters expressed concern regarding oral communications, websites, and documents required by law. For example, one commenter stated that, since promotional materials are described to include "websites" and "oral communication," every taxpayer would theoretically have received "promotional materials" relating to conservation easement donations because every taxpayer has access to the internet. In addition, one commenter stated that, under the proposed regulations, promotional materials would include an oral communication made to any other investor. The commenter also stated that any one oral communication, regardless of accuracy, would "render the deduction unavailable" to all investors. The commenter recommended that the final regulations remove all references to oral communications.

In response, the Treasury Department and the IRS note that receipt of promotional materials by one investor does not automatically trigger receipt of such materials by other investors (although it is circumstantial evidence that may be relevant to showing receipt of promotional materials by other investors). In addition, the broad definition of promotional materials does not mean that the 2.5 times rule will always be met; the quantity of promotional materials is not directly relevant to whether the promotional materials offer the investor the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity. Moreover, even if the 2.5 times rule is met, the effect is not to render the deduction unavailable to all investors but to meet one element of this listed transaction. The Treasury Department and the IRS conclude that a broad definition of promotional materials is warranted; otherwise, taxpayers may contend that they do not meet the elements of the listed transaction identified in these final regulations because promoters made offers via oral communications, websites, or other documents.

Some commenters noted that Congress did not mention promotional materials in section 170(h)(7) and asked that the final regulations explain the requirement's significance in the listed transaction. The Treasury Department and the IRS conclude that the lack of reference to promotional materials in section 170(h)(7) is of no significance to this listed transaction, given that the purpose and scope of section 170(h)(7), which is to disallow a deduction, are different from those of these regulations, which is for the IRS to identify tax avoidance transactions.

One commenter noted that a taxpayer can claim a greatly inflated deduction regardless of whether the taxpayer receives promotional materials and stated that the promotional material requirement appears to be unnecessary and could be removed altogether. The Treasury Department and the IRS have determined that promotional materials are an important attribute of the listed transaction identified in these final regulations because the existence of promotional materials offering investors the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the amount of the taxpayer's investment, on its own, is an element that illustrates tax avoidance. Thus, the final regulations adopt the proposed definition of promotional materials without changes.

One commenter stated that the broad definition of promotional materials does not promote compliance with the law if an attorney that created promotional materials, such as the deed of conveyance, is considered a material advisor to the transaction. This commenter asked for clarity on how the definition of promotional materials in the proposed regulations relates to the definition of a material advisor.

As discussed in part I.D. of this Summary of Comments and Explanation of Revisions, these final regulations do not change the description of a material advisor provided in §301.6111-3(b). A material advisor is a person who makes a tax statement, as defined in §1.6111-3(b)(2)(ii), and derives gross income in excess of the threshold amount, as defined in §301.6111-3(b)(3) (generally, $10,000 for listed transactions). In general, a deed of conveyance would not be a "tax statement" under §301.6111-3(b)(2)(ii) because it is not a statement "that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction." In addition, in general, the deed does not contain any statements related to a tax aspect of the transaction that causes the transaction to be reportable, such as stating that an investor may be eligible to claim a deduction amount of 2.5 times the investor's investment.[1] As a result, the final regulations make no modifications to the definition of promotional materials in response to the comment.

[1] As noted above, a transactional document such as a deed of conveyance is considered to be a promotional material. Although the deed by itself, typically, would not offer the investor the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity, whether all of the promotional materials, taken as a whole, make such an offer is a factual determination.

5. *Syndicated conservation easement transaction*

One commenter stated that "syndication itself is not bad and is often encouraged by the government" (such as in the context of historic tax credits, low-income housing tax credits, and new market tax credits). The commenter opined that the proposed regulations sow confusion because the focus should be on abuse, not on syndication.

The Treasury Department and the IRS agree with the commenter that syndication in itself is not necessarily abusive. However, the Treasury Department and the IRS do not agree with the commenter that the definition of syndicated conservation easement transaction in §1.6011-9(b) needs to explicitly use the word "abusive." The identification of a listed transaction occurs only after the Treasury Department and the IRS have determined that the transaction is a tax avoidance transaction. If a syndicated conservation easement transaction does not meet the elements of the transaction defined in §1.6011-9(b), such as that the partnership's promotional materials do not offer investors the possibility of being allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is 2.5 times the amount of the taxpayer's investment in the partnership (and the partnership does not in fact allocate a charitable contribution deduction the amount of which equals or exceeds an amount that is 2.5 times the amount of the taxpayer's investment in the partnership), then the transaction is not a listed transaction.

V. *Comments Addressing the Role of Qualified Organizations in the Listed Transaction*

Commenters addressed both the section 4965 carveout found in the proposed regulations and the lack of a carveout to the definition of material advisor in the proposed regulations for qualified organizations.

A. *Section 4965 carveout*

The proposed regulations included, consistent with Notice 2017-10, the section 4965 carveout to exclude a qualified organization[2] from treatment as a party to a syndicated conservation easement transaction under section 4965 but requested comments on whether the final regulations should eliminate or limit the section 4965 carveout.

Several commenters advocated for maintaining the section 4965 carveout for various reasons, including that section 170(h)(7)(A) will disallow deductions for most transactions that these regulations seek to deter, that receipt of a donated conservation easement generally would not constitute "net income" or "proceeds" within the meaning of section 4965, and that limiting or eliminating the section 4965 carveout could discourage qualified organizations from accepting contributions of conservation easements (particularly due to uncertainty as to what constitutes a "substantially similar" transaction). With respect to the Treasury Department and the IRS's request for comments on limiting the carveout to qualified organizations that conduct an adequate amount of due diligence (and on what would constitute adequate due diligence for this purpose), several commenters argued that qualified organizations are not equipped to exercise the due diligence that could be required to qualify for a more limited carveout. Several commenters also claimed that because only a "small number" of qualified organizations continue to facilitate syndicated conservation easement transactions, it would be unfairly burdensome to all other qualified organizations if the section 4965 carveout were limited or eliminated.

Given the addition of section 170(h)(7) to the Code, which disallows charitable contribution deductions for some of the most overvalued syndicated conservation easements, as well as other considerations raised by the commenters, the Treasury Department and the IRS have concluded that it is appropriate to maintain the section 4965 carveout in these final regulations. However, the Treasury Department and the IRS will consider proposing to eliminate or limit the section 4965 carveout in future regulations if qualified organizations continue to facilitate the syndicated conservation easement transactions (or substantially similar transactions) described in these regulations.

B. *Donee material advisors*

As discussed in part I.D. of this Summary of Comments and Explanation of Revisions, the proposed regulations provided no special rules for material advisors and noted that this differed from the approach taken in Notice 2017-29 (modifying Notice 2017-10), which provided that a donee described in section 170(c) is not treated as a material advisor under section 6111. The proposed regulations requested comments on whether qualified organizations are receiving fees for providing material aid, assistance, or advice with respect to the syndicated conservation easement transactions described in the proposed regulations, the nature of the services being provided, and why a carveout from the definition of material advisor for qualified organizations is needed.

Several commenters requested that the carveout for qualified organizations found in Notice 2017-29 be reinstated, claiming that the six-year look back period would be burdensome, that the IRS is already privy to information necessary to identify potentially abusive syndicated conservation easement transactions via reporting by other material advisors, and that eliminating the carveout for qualified organizations will discourage qualified organizations from accepting legitimate syndicated conservation easements due to confusion and fear of audits, potential penalties, and litigation. On the other hand, no commenter explained how a qualified organization, acting solely in its capacity as a qualified organization, could be considered a material advisor. To the contrary, several commenters asserted that donee organizations do not fit the definition of "material advisor."

[2] A donation of a qualified conservation contribution must be made to a "qualified organization," generally defined in section 170(h)(3), which includes donations to governmental units, certain public charities, and Type I supporting organizations thereto. Under section 4965(c), the term "tax-exempt entity" includes, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). Thus, absent the section 4965 carveout, tax-exempt entities that would be affected are donees that are qualified organizations described in section 170(h)(3), other than the United States, that accept a conservation easement as part of the syndicated conservation easement transaction described in these regulations.

A person is a material advisor with respect to a transaction if the person: (1) provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction; and (2) directly or indirectly derives gross income in excess of the threshold amount defined in §301.6011-3(b)(3) for the material aid, assistance, or advice. *See* §301.6111-3(b)(1). "Gross income" includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for the implementation of a reportable transaction, but a "fee" does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* §301.6111-3(b)(3)(ii). A person provides material aid, assistance, or advice if the person makes or provides a tax statement to or for the benefit of certain taxpayers who are required to make a disclosure under section 6011 (including for participation in a listed transaction) or other material advisors. *See* §301.6111-3(b)(2)(i). "Tax statement," for these purposes, is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction. *See* §301.6111-3(b)(2)(ii)(A).

In a typical conservation easement transaction, the qualified organization signs the Form 8283 (Section B) and provides a contemporaneous written acknowledgement of the contribution. *See* section 170(f)(8). The qualified organization may also receive separate cash contributions from the donor to monitor and enforce the easement in perpetuity. The qualified organization might also make representations to the donor that it is a qualified organization. Signing the Form 8283 and the contemporaneous written acknowledgement and making representations regarding the donee's status as a qualified organization are not considered to be making a tax statement under §301.6111-3(b)(2)(ii)(A). Therefore, a donee does not provide material, aid, assistance, or advice under §301.6111-3 merely by signing the Form 8283 (Section B) and the contemporaneous written acknowledgement.

The Treasury Department and the IRS conclude that a qualified organization acting solely in its capacity as a qualified organization by, for example, accepting a conservation easement and separate payments or contributions to monitor and enforce that easement, provided such payments or contributions are in fact used for such purpose, would not be considered a material advisor. The Treasury Department and the IRS further conclude that if a qualified organization engages in activities that would result in the organization meeting the requirements to be considered a material advisor, then such organization should be subject to the material advisor rules, including the penalties for failure to disclose. Thus, the final regulations include no special carveout to material advisor status for qualified organizations.

Effect on Other Documents

Notice 2017-10 is obsoleted for transactions occurring after October 8, 2024.

Special Analyses

I. *Paperwork Reduction Act*

The collection of information contained in these final regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these final regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

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 OMB control number.

II. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to "prepare and make available for public comment an initial regulatory flexibility analysis," which will "describe the impact of the rule on small entities." 5 U.S.C. 603(a). Section 605(b) of the RFA allows an agency to certify a rule if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Secretary of the Treasury hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the RFA. As previously explained, the basis for these final regulations is Notice 2017-10, 2017-4 I.R.B. 544 (modified by Notice 2017-29, 2017-20 I.R.B. 1243, and Notice 2017-58, 2017-42 I.R.B. 326). The following chart sets forth the gross receipts of respondents to Notice 2017-10 that report Federal tax information using Form 1065, *U.S. Return of Partnership Income*, and Form 1120-S, *U.S. Income Tax Return for an S corporation*:

Notice 2017-10 All Filings 2017 to 2021 Respondents by Size		
Receipts	Respondents	Filings
Under 5M	93.3%	88.3%
5M to 10M	3.1%	5.2%
10M to 15M	1.2%	2.9%
15M to 20M	0.6%	0.4%
20M to 25M	0.6%	0.7%
Over 25M	1.2%	2.5%

This chart shows that the majority of respondents to Notice 2017-10 reported gross receipts under $5 million. Even assuming that these respondents constitute a substantial number of small entities, the final regulations will not have a significant economic impact on these entities because the final regulations implement sections 6111 and 6112 and §1.6011-4 by specifying the manner in which and time at which an identified transaction must be reported. Accordingly, because the final regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the final regulations is expected to be minimal. Further, the Treasury Department and the IRS expect the reporting burden to be low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $102.08 (2022 dollars) per hour. Thus, it is estimated that a respondent will incur costs of approximately $2,127.00 per filing. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2017-10 indicate that this small amount will not pose any significant economic impact for those taxpayers now required to disclose under the final regulations.

Some commenters asserted that the hourly rate estimate of $98.87 (2021) in the proposed regulations is much lower than what professionals charge to prepare Form 8886. Given the availability of more recent data, the hourly rate estimate is revised in the final regulations to $102.08 (2022). The new number still does not address the substantial differences from the commenters' estimates. The differences are likely attributable to the different methodologies used. The commenters likely used the hourly rate that an independent professional would charge a retail customer to prepare a Form 8886. The Treasury Department and the IRS used the hourly cost that a business owner would pay to employ such a professional. This method was determined based on the comments received from stakeholders objecting to reporting of the retail hourly rate at earlier points.

One commenter asked for the data source for the hourly rate estimate. The source data used by our data unit comes from the Bureau of Labor Statistics.

Some commenters asserted that the estimate of the time to prepare Form 8886 is too low as provided because (1) the estimate ignores the time necessary to comply with the reporting requirement for the years to which the requirement applies retroactively and (2) the estimate does not properly account for some of the time spent, such as learning new topics. At this time, the Treasury Department and the IRS did not find a practical way to adjust the time estimate in response to these comments due to (1) the uncertainties involved and (2) with respect to the prior years, the effect of revealing our underreporting estimates on enforcement.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. Pursuant to section 7805(f) of the Code, the proposed rule preceding this rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). One commenter argued that it is at least possible that the UMRA trigger of $100 million could be triggered because of the potential burdens of updating State or local regulations concerning the acceptance of land donations, harmonizing information reporting with the requirements of the regulations, and cooperation with examination proceedings. The Treasury Department and the IRS have considered this comment and conclude that it is not persuasive, particularly in light of the continuing carve-out for donees in these final regulations. This final rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. One commenter suggested that, if the Treasury Department and the IRS decide to eliminate the carveout for donees described in section 170(c) from being treated as a party to the transaction under section 4965, then the final regulations will have federalism implications under Executive Order 13132. The final regulations maintain the section 4965 carveout. This final 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 Executive order.

V. *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.

VI. *Congressional Review Act*

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

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at https://www.irs.gov.

Drafting Information

The principal authors of these final regulations are Joshua S. Klaber and Eugene Kirman, Office of Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.6011-9 in numerical order to read in part as follows:

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

* * * * *

Section 1.6011-9 also issued under 26 U.S.C. 6001 and 6011.

* * * * *

Par. 2. Section 1.6011-9 is added to read as follows:

§1.6011-9 Syndicated conservation easement listed transactions.

(a) *Identification as listed transaction*. Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of §1.6011-4(b)(2).

(b) *Syndicated conservation easement transaction*. The term *syndicated conservation easement transaction* means a transaction in which the following steps occur (regardless of the order in which they occur)--

(1) A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of being allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment, as determined in paragraph (d)(4) of this section, in the pass-through entity, as determined under paragraph (d) of this section (2.5 times rule);

(2) The taxpayer acquires an interest, directly or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns or acquires real property (that is, becomes an investor in the entity);

(3) The pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer; and

(4) The taxpayer claims a charitable contribution deduction with respect to the contribution of the real property interest on the taxpayer's Federal income tax return.

(c) *Definitions*. The following definitions apply for purposes of this section:

(1) *Charitable contribution deduction*. The term *charitable contribution deduction* means a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1) of the Code.

(2) *Conservation easement*. The term *conservation easement* means a restriction (granted in perpetuity) on the use which may be made of the real property, within the meaning of section 170(h)(2)(C) of the Code, exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and (h)(4) of the Code.

(3) *Pass-through entity*. The term *pass-through entity* means a partnership, S corporation, or trust (other than a grantor trust within the meaning of subchapter J of chapter 1 of the Code).

(4) *Promotional materials*. The term *promotional materials* includes materials described in §301.6112-1(b)(3)(iii)(B) of this chapter and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as deeds of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

(5) *Qualified organization*. The term *qualified organization* means an organization described in section 170(h)(3) of the Code.

(6) *Real property*. The term *real property* includes all land, structures, and buildings, including a certified historic structure defined in section 170(h)(4)(C) of the Code.

(7) *Substantially similar*. The term *substantially similar* is defined in §1.6011-4(c)(4). For example, transactions that meet the elements of paragraph (b) of this section, except that the pass-through entity contributes a fee simple interest in real property or a real property interest described in section 170(h)(2)(A) or (B) of the Code rather than a conservation easement, are substantially similar to the listed transaction identified in this section.

(d) *Application of the 2.5 times rule*—(1) *Bright-line rule*. Transactions for which the promotional materials offer the taxpayer the possibility of being allocated a charitable contribution deduction of only an amount less than 2.5 times the taxpayer's investment and for which the taxpayer is actually allocated a charitable contribution deduction of an amount less than 2.5 times the taxpayer's investment (so that the rebuttable presumption in paragraph (d)(3) of this section does not apply) are generally not considered *substantially similar* to the listed transaction identified in this section. However, if a pass-through entity engages in a series of transactions with a principal purpose of avoiding the application of the bright-line rule in this paragraph (d)(1), the series of transactions may be disregarded or the arrangement may be recharacterized in accordance with its substance. Whether a

series of transactions has a principal purpose of avoiding the application of this bright-line rule is determined based on all the facts and circumstances.

(2) *Multiple suggested contribution amounts*. If the promotional materials suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied contribution amount determines whether the 2.5 times rule in this paragraph (d) is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) states a higher charitable contribution deduction amount than stated by other promotional materials, then the highest stated charitable contribution deduction amount determines whether the 2.5 times rule is met.

(3) *Rebuttable presumption*. The 2.5 times rule in this paragraph (d) is deemed to be met if the pass-through entity donates a real property interest within three years following the taxpayer's investment in the pass-through entity, the pass-through entity allocates a charitable contribution deduction to the taxpayer the amount of which equals or exceeds two and one-half times the amount of the taxpayer's investment, and the taxpayer claims a charitable contribution deduction the amount of which equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

(4) *Determining the amount of the taxpayer's investment in the pass-through entity*—(i) *In general*. A taxpayer may determine the amount of the taxpayer's investment in the pass-through entity for purposes of paragraph (b) of this section using either the anti-stuffing method in paragraph (d)(4)(ii) of this section or, for contributions made after December 29, 2022, the relevant basis method in paragraph (d)(4)(iii) of this section. No other methods may be used.

(ii) *Anti-stuffing method*. Under the anti-stuffing method, the amount of a taxpayer's investment in the pass-through entity is the portion of the cash or fair market value of the assets the taxpayer uses to acquire its interest in the pass-through entity that is attributable to the real property on which a conservation easement is placed (or the portion thereof, if an easement is placed on a portion of the real property) that gives rise to the charitable contribution described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's cost of acquiring the taxpayer's interest in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section (such other property may include other real property, cash, cash equivalents, digital assets, marketable securities, or other tangible or intangible assets), that portion of the taxpayer's acquisition cost is not considered part of the taxpayer's investment for purposes of this section because it is not attributable to the portion of the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section. For purposes of this paragraph (d)(4)(ii), assets retained to pay for costs related to the operation and maintenance of the real property on which the conservation easement is placed, including costs that may be incurred in future years, are not attributable to the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section. In the case of a substantially similar transaction described in paragraph (c)(7) of this section, the rules in this paragraph (d)(4)(ii) apply except that the relevant real property that gives rise to the charitable contribution deduction described in paragraph (b)(3) of this section is the real property donated.

(iii) *Relevant basis method*. For contributions made after December 29, 2022, taxpayers may use their relevant basis, as determined in accordance with section 170(h)(7)(B) of the Code and §1.170A-14(k), as the amount of their investment for purposes of paragraph (b) of this section.

(5) *Examples*. For the examples in this paragraph (d)(5), assume that the partnerships are respected for Federal tax purposes, and that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code.

(i) *Example 1*--(A) *Facts*. Individual A purchased an interest in P, a partnership that owns real property with a fair market value of $500,000 and marketable securities with a fair market value of $500,000. A is one of four equal investors in P, each of whom purchased its interest in P for $250,000 of cash. With respect to an investor's $250,000 payment for its interest in P, the promotional materials stated that P expected to allocate a $500,000 charitable contribution deduction to the investor (that is, a charitable contribution deduction that is two times the amount an investor paid for its interest in P). After all four investors have purchased their interests in P, P donates a conservation easement on all of its real property to a qualified organization as defined in section 170(h)(3) of the Code and reports a $2,000,000 charitable contribution on its Form 1065, *U.S. Return of Partnership Income,* based on P obtaining an appraisal indicating that the value of the conservation easement is $2,000,000. The Schedule K-1 (Form 1065) that P furnishes to A indicates that P allocated a charitable contribution deduction to A for the taxable year. A claims a charitable contribution deduction with respect to the charitable contribution on A's Federal income tax return.

(B) *Analysis*. A's cost of acquiring its interest in P is $250,000. The real property on which a conservation easement was placed and that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section was P's property valued at $500,000. P's only other asset was marketable securities worth $500,000. Accordingly, half of A's share of the value of the assets held by P was attributable to the real property on which P placed a conservation easement and that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section. Therefore, under paragraph (d)(4)(i) of this section, for purposes of paragraph (b) of this section, the amount of A's investment in P is $125,000 (that is, half of A's $250,000 acquisition cost, which is the portion of A's acquisition cost that is attributable to the real property on which P placed a conservation easement and that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section). Because A's investment for purposes of the 2.5 times rule is $125,000 and A's expected charitable contribution deduction, based on the promotional materials, is $500,000 (that is, an expected deduction that is four times A's investment), the 2.5 times rule of paragraph (b)(1) of this section is met. The transaction also meets the other elements of a syndicated conservation easement within the meaning of paragraph (b) of this section and therefore is a listed transaction for purposes of §1.6011-4(b)(2).

(ii) *Example 2*--(A) *Facts*. Individual B acquires a ten percent interest in InvestCo, a partnership, by making a $250,000 cash contribution. Immediately after B's acquisition, InvestCo's only asset is $2,500,000 of cash. The promotional materials state that InvestCo expects to allocate a $500,000 charitable contribution deduction to B with respect to B's partnership interest. InvestCo pays $600,000 to purchase marketable securities. InvestCo also purchases an interest in another partnership, PropCo, for $1,900,000 from one of PropCo's partners. At

the same time as the purchase, InvestCo also contributes $100,000 of its marketable securities to PropCo. Immediately after InvestCo's purchase and contribution, PropCo's only assets are real property worth $2,400,000 and the marketable securities worth $100,000. PropCo donates its entire interest in the real property (a fee simple interest) to a qualified organization as defined in section 170(h)(3) of the Code and reports a $6,250,000 charitable contribution on its Form 1065, *U.S. Return of Partnership Income,* based on PropCo obtaining an appraisal indicating that the value of the real property is $6,250,000. PropCo allocates a portion of the charitable contribution deduction to InvestCo. The Schedule K–1 (Form 1065) that InvestCo furnishes to B indicates that InvestCo allocated a charitable contribution deduction to B for the taxable year. B claims a charitable contribution deduction with respect to the contribution on B's Federal income tax return.

(B) *Analysis*. Immediately after InvestCo's acquisition of its interest in PropCo, InvestCo's only assets were its interest in PropCo and $500,000 in marketable securities. Accordingly, eighty percent of InvestCo's funds ($2,000,000 / $2,500,000) were used to acquire its interest in PropCo. B's investment in InvestCo is $250,000; therefore, eighty percent of that amount, $200,000, is attributable to InvestCo's interest in PropCo. Immediately after InvestCo's acquisition of its interest in PropCo, PropCo had real property worth $2,400,000 and marketable securities worth $100,000. As such, ninety-six percent ($2,400,000 / $2,500,000) of PropCo's assets were the real property that was subsequently donated. Therefore, under paragraph (d)(4)(i) of this section, for purposes of paragraph (b) of this section, the amount of B's investment in InvestCo that is attributable to the donated real property that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section is $200,000 multiplied by ninety-six percent, or $192,000. Because B's investment for purposes of the 2.5 times rule is $192,000 and B's expected charitable contribution deduction, based on the promotional materials, is $500,000 (that is, an expected deduction that is at least 2.5 times B's investment), the 2.5 times rule of paragraph (b)(1) of this section is met. The transaction also meets the other elements of a syndicated conservation easement within the meaning of paragraph (b) of this section, except that PropCo contributed a fee simple interest in real property rather than a conservation easement. Under paragraph (c)(7) of this section, the transaction is substantially similar to the listed transaction described in paragraph (b) of this section and, therefore, under paragraph (a) of this section, the transaction in this example is a listed transaction for purposes of §1.6011-4(b)(2).

(e) *Participation in a syndicated conservation easement transaction*--(1) *In general*. Whether a taxpayer has participated in a syndicated conservation easement transaction described in paragraph (b) of this section is determined under §1.6011-4(c)(3)(i)(A).

(2) *Class of participants*. For purposes of §1.6011-4(c)(3)(i)(A), participants in a transaction that is the same as, or substantially similar to, a syndicated conservation easement transaction described in paragraph (b) of this section include--

(i) An owner of a pass-through entity;

(ii) A pass-through entity; and

(iii) Any other taxpayer whose Federal income tax return reflects tax consequences or a tax strategy arising from a transaction that is the same as, or substantially similar to, the transaction described in paragraph (b) of this section.

(3) *Exclusion*. A qualified organization to which the conservation easement is donated is not treated as a participant under §1.6011-4(c)(3)(i)(A) in a syndicated conservation easement transaction described in paragraph (b) of this section.

(f) *Application of section 4965*. A qualified organization to which the real property interest is donated is not treated under section 4965 of the Code as a party to the transaction described in paragraph (b) of this section.

(g) *Disclosures under Notice 2017-10*. A taxpayer who disclosed their participation in a transaction pursuant to Notice 2017-10 and in accordance with §1.6011-4 before October 8, 2024, is treated as having made the disclosure required under this section and §1.6011-4, for the years covered by that disclosure, as of the date of the disclosure under Notice 2017-10.

(h) *Applicability date*--(1) *In general*. This section's identification of transactions that are the same as, or substantially similar to, the transactions described in paragraph (b) of this section as listed transactions for purposes of §1.6011-4(b)(2) and sections 6111 and 6112 of the Code is effective October 8, 2024.

(2) *Applicability date for material advisors*. Notwithstanding §301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after October 8, 2018**.**

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: September 16, 2024

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

(Filed by the Office of the Federal Register October 07, 2024, 8:45 a.m., and published in the issue of the Federal Register for October 08, 2024, 89 FR 81341)

Part III

Extension of Replacement Period for Livestock Sold on Account of Drought

Notice 2024-70

SECTION 1. PURPOSE

This notice provides guidance regarding an extension of the replacement period under § 1033(e) of the Internal Revenue Code for livestock sold on account of drought in specified counties.

SECTION 2. BACKGROUND

.01 Nonrecognition of Gain on Involuntary Conversion of Livestock. Section 1033(a) generally provides for nonrecognition of gain when property is involuntarily converted and replaced with property that is similar or related in service or use. Section 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions.

.02 Replacement Period. Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period. If a sale or exchange of livestock is treated as an involuntary conversion under § 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the federal government, § 1033(e)(2)(A) provides that the replacement period ends four years after the close of the first taxable year in which any part of the gain from the conversion is realized. Section 1033(e)(2)(B) provides that the Secretary may extend this replacement period on a regional basis for such additional time as the Secretary determines appropriate if the weather-related conditions that resulted in the area being designated as eligible for assistance by the federal government continue for more than three years. Section 1033(e)(2) is effective for any taxable year with respect to which the due date (without regard to extensions) for a taxpayer's return is after December 31, 2002.

SECTION 3. EXTENSION OF REPLACEMENT PERIOD UNDER § 1033(e)(2)(B)

Notice 2006-82, 2006-2 C.B. 529, provides for extensions of the replacement period under § 1033(e)(2)(B). If a sale or exchange of livestock is treated as an involuntary conversion on account of drought and the taxpayer's replacement period is determined under § 1033(e)(2)(A), the replacement period will be extended under § 1033(e)(2)(B) and Notice 2006-82 until the end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's four-year replacement period determined under § 1033(e)(2)(A); and (3) does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region. The applicable region is the county that experienced the drought conditions on account of which the livestock was sold or exchanged and all counties that are contiguous to that county.

A taxpayer may determine whether exceptional, extreme, or severe drought is reported for any location in the applicable region by reference to U.S. Drought Monitor maps that are produced on a weekly basis by the National Drought Mitigation Center. U.S. Drought Monitor maps are archived at https://droughtmonitor.unl.edu/Maps/MapArchive.aspx.

In addition, Notice 2006-82 provides that the Internal Revenue Service will publish in September of each year a list of counties[1] for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor maps to determine whether exceptional, extreme, or severe drought has been reported for any location in the applicable region.

The Appendix to this notice contains the list of counties for which exceptional, extreme, or severe drought was reported during the 12-month period ending August 31, 2024. Under Notice 2006-82, the 12-month period ended on August 31, 2024, is not a drought-free year for an applicable region that includes any county on this list. Accordingly, for a taxpayer who qualified for a four-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of 2024 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2024), the replacement period will be extended under § 1033(e)(2) and Notice 2006-82 if the applicable region includes any county on this list. This extension will continue until the end of the taxpayer's first taxable year ending after a drought-free year for the applicable region.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Lewis Saideman of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, please contact Mr. Saideman at (202) 317-7009 (not a toll-free numbers).

[1] While Notice 2006-82 uses the term "counties," this notice lists other applicable regions as well (e.g., boroughs, parishes, etc.).

APPENDIX

Alabama

Counties of Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, DeKalb, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Limestone, Lowndes, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Saint Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, and Winston.

Arizona

Counties of Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Navajo, Pima, Pinal, Santa Cruz, and Yavapai.

Arkansas

Counties of Arkansas, Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Conway, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Fulton, Garland, Grant, Hot Spring, Jefferson, Lafayette, Lee, Lincoln, Little River, Lonoke, Miller, Mississippi, Monroe, Ouachita, Perry, Phillips, Pope, Prairie, Pulaski, Randolph, Saint Francis, Saline, Sevier, Sharp, Union, White, Woodruff, and Yell.

California

County of Siskiyou.

Colorado

Counties of Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Broomfield, Conejos, Costilla, Delta, Denver, Dolores, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, La Plata, Larimer, Las Animas, Mesa, Mineral, Montezuma, Montrose, Ouray, Prowers, Rio Grande, Saguache, San Juan, San Miguel, and Weld.

District of Columbia

District of Columbia.

Florida

Counties of Bay, Brevard, Broward, Charlotte, Collier, DeSoto, Escambia, Gadsden, Glades, Hardee, Hendry, Highlands, Hillsborough, Holmes, Indian River, Jackson, Lee, Manatee, Martin, Okaloosa, Okeechobee, Osceola, Palm Beach, Pasco, Pinellas, Polk, Saint Lucie, Santa Rosa, Sarasota, Walton, and Washington.

Georgia

Counties of Baker, Baldwin, Banks, Barrow, Bartow, Bibb, Bleckley, Butts, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clarke, Clay, Cobb, Colquitt, Dade, Dawson, Decatur, DeKalb, Dooly, Dougherty, Douglas, Early, Elbert, Fannin, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Grady, Gwinnett, Habersham, Hall, Haralson, Hart, Houston, Jackson, Jasper, Jones, Laurens, Lincoln, Lumpkin, Macon, Madison, Miller, Mitchell, Monroe, Murray, Oconee, Oglethorpe, Paulding, Peach, Pickens, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Seminole, Stephens, Stewart, Terrell, Thomas, Towns, Twiggs, Union, Walker, Walton, Washington, White, Whitfield, Wilkes, Wilkinson, and Worth.

Hawaii

Counties of Hawaii, Honolulu, Kauai, and Maui.

Idaho

Counties of Benewah, Bonner, Bonneville, Boundary, Clark, Clearwater, Fremont, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Shoshone, and Teton.

Illinois

Counties of Adams, Bond, Boone, Brown, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Hamilton, Hancock, Jackson, Jasper, Jefferson, Lawrence, McDonough, McHenry, Marion, Mercer, Monroe, Montgomery, Perry, Pike, Randolph, Richland, Rock Island, Saint Clair, Schuyler, Shelby, Stephenson, Wabash, Washington, Wayne, White, Williamson, and Winnebago.

Indiana

Counties of Bartholomew, Brown, Clay, Daviess, Decatur, Dubois, Gibson, Greene, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Monroe, Orange, Owen, Pike, Ripley, Scott, Sullivan, and Washington.

Iowa

Counties of Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, Page, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright.

Kansas

Counties of Allen, Anderson, Atchison, Barber, Barton, Bourbon, Butler, Chase, Chautauqua, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Douglas, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Johnson, Kearny, Kingman, Kiowa, Labette, Lane, Leavenworth, Lincoln, Linn, Lyon, McPherson, Marion, Marshall, Meade, Miami, Mitchell, Mont-

gomery, Morris, Morton, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Sedgwick, Seward, Shawnee, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Washington, Wilson, Woodson, and Wyandotte.

Kentucky

Counties of Adair, Allen, Barren, Bell, Boyd, Boyle, Breathitt, Breckinridge, Butler, Carter, Casey, Clay, Clinton, Cumberland, Edmonson, Elliott, Floyd, Grayson, Green, Greenup, Hardin, Harlan, Hart, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Leslie, Letcher, Lincoln, McCreary, Magoffin, Marion, Martin, Metcalfe, Monroe, Morgan, Nelson, Ohio, Owsley, Perry, Pulaski, Rockcastle, Russell, Taylor, Warren, Wayne, and Whitley.

Louisiana

Parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, Lafourche, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Landry, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn.

Maryland

Counties of Allegany, Frederick, Garrett, Howard, Montgomery, Prince George's, and Washington.

Massachusetts

Counties of Dukes and Nantucket.

Michigan

County of Dickinson, Gogebic, Iron, and Ontonagon.

Minnesota

Counties of Aitkin, Anoka, Becker, Beltrami, Benton, Big Stone, Blue Earth, Brown, Carlton, Carver, Cass, Chisago, Clearwater, Cook, Cottonwood, Crow Wing, Dakota, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kittson, Koochiching, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, McLeod, Mahnomen, Marshall, Martin, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Olmsted, Otter Tail, Pennington, Pine, Pipestone, Polk, Ramsey, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Saint Louis, Scott, Sherburne, Sibley, Stearns, Steele, Todd, Traverse, Wabasha, Wadena, Waseca, Washington, Watonwan, Winona, Wright, and Yellow Medicine.

Mississippi

Counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo.

Missouri

Counties of Adair, Andrew, Audrain, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Franklin, Gasconade, Gentry, Greene, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Jackson, Jefferson, Johnson, Knox, Laclede, Lafayette, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Oregon, Osage, Perry, Pettis, Phelps, Pike, Platte, Polk, Pulaski, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, Saint Clair, Sainte Genevieve, Saint Francois, Saline, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, Vernon, Washington, Wayne, Webster, Worth, and Wright.

Montana

Counties of Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Daniels, Deer Lodge, Fallon, Flathead, Gallatin, Garfield, Glacier, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Park, Phillips, Pondera, Powder River, Powell, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, and Valley.

Nebraska

Counties of Adams, Antelope, Banner, Blaine, Boone, Box Butte, Brown, Buffalo, Burt, Butler, Cass, Cedar, Cherry, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Dixon, Dodge, Douglas, Fillmore, Franklin, Gage, Greeley, Hall, Hamilton, Holt, Hooker, Howard, Jefferson, Kearney, Knox, Lancaster, Logan, Loup, McPherson, Madison, Merrick, Morrill, Nance, Nuckolls, Pierce, Platte, Polk, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, and York.

Nevada

County of Humboldt.

New Mexico

Counties of Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Dona

Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, and Valencia.

New York

Counties of Cattaraugus, Genesee, Livingston, Monroe, and Wyoming.

North Carolina

Counties of Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Granville, Greene, Guilford, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Martin, Mecklenburg, Mitchell, Montgomery, Moore, New Hanover, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

North Dakota

Counties of Adams, Benson, Bottineau, Bowman, Burke, Cavalier, Divide, Grand Forks, McHenry, McKenzie, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams.

Ohio

Counties of Adams, Athens, Belmont, Brown, Carroll, Champaign, Clark, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Harrison, Highland, Hocking, Jackson, Jefferson, Lawrence, Licking, Madison, Meigs, Monroe, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Scioto, Tuscarawas, Union, Vinton, Warren, and Washington.

Oklahoma

Counties of Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Love, McClain, McCurtain, Major, Marshall, Murray, Noble, Nowata, Osage, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, and Woodward.

Oregon

Counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, and Yamhill.

Pennsylvania

Counties of Bedford, Cambria, Fayette, Franklin, Fulton, Greene, Indiana, Somerset, Washington, and Westmoreland.

South Carolina

Counties of Abbeville, Aiken, Allendale, Anderson, Bamberg, Beaufort, Berkeley, Calhoun, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, McCormick, Marion, Marlboro, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

South Dakota

Counties of Brookings, Butte, Custer, Deuel, Fall River, Grant, Harding, Lake, Lawrence, Lincoln, McCook, Meade, Minnehaha, Moody, Oglala Lakota, Pennington, Perkins, Roberts, Turner, and Union.

Tennessee

Counties of Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, McMinn, McNairy, Macon, Madison, Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Union, Van Buren, Warren, Wayne, Weakley, White, Williamson, and Wilson.

Texas

Counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble,

King, Kinney, Kleberg, Knox, Lamar, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, and Zavala.

Virginia

Cities of Alexandria, Buena Vista, Charlottesville, Covington, Danville, Fairfax, Falls Church, Galax, Harrisonburg, Lexington, Lynchburg, Manassas, Manassas Park, Martinsville, Radford, Roanoke, Salem, Staunton, Waynesboro, and Winchester. Counties of Accomack, Albemarle, Alleghany, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Culpeper, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Loudoun, Louisa, Lunenburg, Madison, Mecklenburg, Montgomery, Nelson, Northampton, Orange, Page, Patrick, Pittsylvania, Prince Edward, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Spotsylvania, Stafford, Tazewell, Warren, Washington, Wise, and Wythe.

Washington

Counties of Adams, Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Lincoln, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, and Yakima.

West Virginia

County of Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, McDowell, Marion, Marshall, Mason, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming.

Wisconsin

Counties of Adams, Ashland, Barron, Bayfield, Brown, Buffalo, Burnett, Calumet, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Door, Douglas, Dunn, Eau Claire, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Marathon, Marinette, Marquette, Monroe, Oneida, Outagamie, Pepin, Polk, Portage, Price, Richland, Rock, Rusk, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

Wyoming

Counties of Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Teton, Washakie, and Weston.

Guam

Island of Guam.

Republic of the Marshall Islands

Atolls of Kwajalein, Majuro, and Wotje.

Federated States of Micronesia

States of Pingelap, Ulithi, Woleai, and Yap.

Commonwealth of the Northern Mariana Islands

Islands of Rota and Saipan.

United States Virgin Islands

Islands of Saint Croix, Saint John, and Saint Thomas.

Relief for Taxpayers Affected by the 2023-2024 Terroristic Action in the State of Israel

Notice 2024-72

SECTION I. PURPOSE

This notice provides relief under section 7508A of the Internal Revenue Code[1] for persons that the Secretary of the Treasury (Secretary) has determined to be affected by the terroristic action in the State of Israel throughout 2023 and 2024. The Department of the Treasury and the Internal Revenue Service (IRS) may provide additional relief in the future. For taxpayers who were "Affected Taxpayers" for purposes of Notice 2023-71, 2023-44 IRB 1191 (October 30, 2023), the separate determination of terroristic action and grant of relief set forth in this notice will also postpone taxpayer acts and government acts already postponed by Notice 2023-71 if the taxpayer is eligible for relief under both notices.

[1] Unless otherwise specified, all "Section" or "§" references are to sections of the Internal Revenue Code or the Procedure and Administration Regulations (26 CFR part 301).

SECTION II. BACKGROUND

Section 7508A(a) provides the Secretary or her delegate with authority to postpone the time (up to one year) for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary or her delegate to be affected by a terroristic or military action as defined in section 692(c)(2). Section 692(c)(2) defines a terroristic action as "any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies."

Section 4.01(1) of Revenue Procedure 2004-26, 2004-1 C.B. 890, provides that prior to publishing a determination that an event outside the United States constitutes a terroristic action within the meaning of section 692(c)(2), the Secretary or her delegate will ascertain whether the Department of State and the Department of Justice believe that a preponderance of the evidence indicates that the event resulted from terrorist activity directed against the United States or its allies. On September 30, 2024, in accordance with the procedures described in Rev. Proc. 2004-26, the Secretary determined that the terrorist activity throughout 2023 and 2024 against the State of Israel constitutes terroristic action within the meaning of section 692(c)(2).

SECTION III. GRANT OF RELIEF

With respect to taxpayers described in section III.A of this notice (affected taxpayers), this notice postpones the due dates for the actions described in section III.B and III.C of this notice until September 30, 2025.

A. Affected Taxpayers

Section 301.7508A-1(d)(1) describes several types of "affected taxpayers" eligible for relief under section 7508A. The Secretary has determined that the following types of taxpayers are affected taxpayers with respect to the terroristic action eligible for the relief provided in this notice:

- Any individual whose principal residence, and any business entity or sole proprietor whose principal place of business, is located in the State of Israel, the West Bank or Gaza (covered area);
- Any individual affiliated with a recognized government or philanthropic organization and who is assisting in the covered area, such as a relief worker;
- Any individual, business entity or sole proprietor, or estate or trust whose tax return preparer or records necessary to meet a deadline for postponed acts are located in the covered area;
- Any spouse of an affected taxpayer, solely with regard to a joint return of two married individuals; and
- Any individual visiting the covered area who was killed, injured, or taken hostage as a result of the terroristic action.

The IRS automatically identifies taxpayers whose principal residence or principal place of business is located in the covered area based on previously filed returns and applies relief. Affected taxpayers whose principal residence or principal place of business is not located in the covered area should call the IRS disaster hotline at (866) 562-5227 to request relief. Alternatively, international callers may call (267) 941-1000.

B. Postponement of Due Dates with Respect to Certain Taxpayer Acts

Affected taxpayers have until September 30, 2025, to file tax returns, make tax payments, and perform certain time-sensitive acts listed in § 301.7508A-1(c)(1) and Revenue Procedure 2018-58, 2018-50 IRB 990 (December 10, 2018), that are due to be performed on or after September 30, 2024, and before September 30, 2025. Any taxpayer acts that are due to be performed on or after September 30, 2024, and before September 30, 2025, are postponed until September 30, 2025. These acts include, but are not limited to:

- Filing any return of income tax, estate tax, gift tax, generation-skipping transfer tax, excise tax (other than firearms tax), harbor maintenance tax, or employment tax;
- Paying any income tax, estate tax, gift tax, generation-skipping transfer tax, excise tax (other than firearms tax), harbor maintenance tax, or employment tax, or any installment of those taxes;
- Making contributions to a qualified retirement plan;
- Filing a petition with the Tax Court;
- Filing a claim for credit or refund of any tax; and
- Bringing suit upon a claim for credit or refund of any tax.

This is not an exhaustive list. For further information, see § 301.7508A-1(c)(1) and Rev. Proc. 2018-58.

C. Postponement of Due Dates with Respect to Certain Government Acts

This notice also provides the IRS with additional time to perform certain time-sensitive actions with respect to affected taxpayers. Any government acts described in § 301.7508A-1(c)(2) that are due to be performed on or after September 30, 2024, and before September 30, 2025, are postponed until September 30, 2025. These acts include:

- Assessing any tax;
- Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
- Collecting by the IRS, by levy or otherwise, of the amount of any liability in respect of any tax; and
- Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and allowing a credit or refund of any tax.

SECTION IV. INTERACTION WITH NOTICE 2023-71

Notice 2023-71 provided taxpayers affected by the October 7, 2023 Terrorist Attacks against the State of Israel until October 7, 2024, to perform acts due to be performed on or after October 7, 2023, and before October 7, 2024. Time-sensitive acts postponed by Notice 2023-71 are not due to be performed until after the beginning of the postponement period provided by this notice. Accordingly, taxpayers eligible for relief under Notice 2023-71 who are also eligible for relief under this notice have until September 30, 2025, to perform the time-sensitive acts that were postponed by Notice 2023-71. Taxpayers eligible for relief under Notice 2023-71 who are not also eligible for relief under this notice have until October 7, 2024, to

perform the time-sensitive acts postponed by Notice 2023-71. Government acts that were postponed by Notice 2023-71 until October 7, 2024, and that are described in section III.C., are also postponed by this notice until September 30, 2025, for taxpayers that are eligible for relief under Notice 2023-71 and this notice.

SECTION V. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, you may call (202) 317-3400 (not a toll-free number).

Additional Guidance with Respect to Long-Term, Part-Time Employees, Including Guidance Regarding Application of Section 403(b)(12) to Long-Term, Part-Time Employees under Section 403(b) Plans

Notice 2024-73

I. PURPOSE

This notice provides guidance on discrete issues related to the application of the nondiscrimination rules of section 403(b)(12) of the Internal Revenue Code (Code) with respect to long-term, part-time employees under a plan that satisfies the requirements of section 403(b) (section 403(b) plan). Section 125(a)(2) of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), amended section 403(b)(12) of the Code. In addition, section 125(a)(1) of the SECURE 2.0 Act added section 202(c) of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended (ERISA), to provide rules for including long-term, part-time employees in plans subject to ERISA (ERISA LTPT employees), and section 125(b) of the SECURE 2.0 Act added section 203(b)(4) of ERISA to provide a special vesting rule for ERISA LTPT employees. Section 125(a) and (b) of the SECURE 2.0 Act apply to plan years beginning after December 31, 2024.

This notice also (1) provides that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing proposed regulations with respect to section 403(b)(12)(D) of the Code and guidance with respect to sections 202(c) and 203(b)(4) of ERISA,[1] (2) announces that the final regulation that the Treasury Department and the IRS intend to issue related to long-term, part-time employees under section 401(k) plans (section 401(k) LTPT employees)[2] will apply no earlier than to plan years that begin on or after January 1, 2026, and (3) asks for comments on the content of this notice.

II. BACKGROUND

Section 403(b) of the Code sets forth requirements applicable to contributions to a section 403(b) plan made for employees who are performing services for a public school of a State or a local government, for employees of employers that are tax-exempt organizations under section 501(c)(3), and for ministers described in section 414(e)(5)(A).

Section 403(b)(12)(A)(i) provides that, with respect to contributions not made pursuant to a salary reduction agreement, a section 403(b) plan must satisfy the requirements under section 401(a)(4), (5), (17) and (26), the nondiscrimination requirements for matching and employee after-tax contributions under section 401(m), and the coverage requirements under section 410(b), in the same manner as if the section 403(b) plan were described in section 401(a).

Section 403(b)(12)(A)(ii) provides that, with respect to contributions made pursuant to a salary reduction agreement (elective deferrals), a section 403(b) plan must satisfy the "universal availability" requirement. Under the universal availability requirement, all employees of an employer maintaining a section 403(b) plan generally must be permitted to make elective deferrals if any employee of the employer is permitted to make elective deferrals. However, the flush language of section 403(b)(12)(A) provides that certain categories of employees may be excluded from making elective deferrals despite the universal availability requirement, including students performing services described in section 3121(b)(10) (student employees) and employees who normally work less than 20 hours per week (part-time employees).[3]

Section 403(b)(12)(A) provides that the student employee exclusion and the part-time employee exclusion are "[s]ubject to the conditions applicable under section 410(b)(4)." In turn, section 410(b)(4) provides that "if a plan (i) prescribes minimum age and service requirements as a condition of participation, and (ii) excludes *all* employees not meeting such requirements from participation, then such employees shall be excluded from consideration for purposes of this subsection." (Emphasis added.) This section 410(b)(4) consistency requirement means that, if a plan imposes minimum age and service eligibility conditions, those conditions must be consistently applied and that failure to do so nullifies the ability to apply those eligibility conditions with respect to any employee.

Section 1.403(b)-5(b)(4)(i) interprets the phrase "[s]ubject to the conditions applicable under section 410(b)(4)" in section 403(b)(12)(A) as imposing a section 403(b) consistency requirement that is similar to the section 410(b)(4) consistency requirement for purposes of applying the student employee and part-time employee exclusions. For example, under this section 403(b) consistency requirement, if any employee who is described

[1] The Secretary of the Treasury has interpretive authority over sections 202 and 203 of ERISA pursuant to Reorganization Plan No. 4 of 1978, 5 U.S.C. App.

[2] The Treasury Department and the IRS issued a proposed regulation related to rules for section 401(k) LTPT employees on November 27, 2023 (88 FR 82796).

[3] Section 1.403(b)-5(b)(4)(ii)(E) allows a plan to set a lower number of hours per week than 20 hours per week for purposes of defining a part-time employee under the part-time employee exclusion.

in the part-time exclusion may make elective deferrals, then no employee who is described in the part-time employee exclusion may be excluded from making elective deferrals under the part-time exclusion.

Section 125(a)(1) of the SECURE 2.0 Act added section 202(c) of ERISA, which provides rules for ERISA LTPT employees. Section 202(c)(1) of ERISA provides, in part, that a salary reduction agreement (as described in section 403(b) of the Code) may not require, as a condition of participation in the agreement, that an employee complete a period of service with the employer maintaining the plan that extends beyond the close of the earlier of (A) the period permitted under section 202(a)(1) of ERISA (the completion of one year of service or the attainment of age 21) or (B) the first 24-month period consisting of two consecutive 12-month periods during each of which the employee has worked at least 500 hours of service, and by the close of which the employee has satisfied the minimum age requirement under section 202(a)(1)(A)(i) of ERISA (attainment of age 21). Section 401(k)(2)(D) of the Code provides similar rules for section 401(k) LTPT employees, which are the subject of a proposed regulation issued on November 27, 2023 (see footnote 2).

Section 125(a)(2) of the SECURE 2.0 Act made a conforming amendment to section 403(b)(12)(A) of the Code and added section 403(b)(12)(D). Section 403(b)(12)(D)(i) provides, in relevant part, that in the case of employees who are eligible to participate in a section 403(b) plan solely by reason of the eligibility rules for ERISA LTPT employees under section 202(c)(1)(B) of ERISA: (1) notwithstanding section 401(a)(4) of the Code, an employer is not required to make nonelective or matching contributions on behalf of ERISA LTPT employees even if nonelective or matching contributions are made on behalf of other employees eligible to participate in the plan; and (2) the employer may elect to exclude ERISA LTPT employees from the application of sections 401(a)(4), 401(m)(2), and 410(b). Section 401(k)(15)(B)(i) provides similar rules with respect to section 401(k) LTPT employees.

Section 125(b) of the SECURE 2.0 Act added section 203(b)(4) of ERISA, which provides a special vesting rule for ERISA LTPT employees.[4] Section 203(b)(4) of ERISA provides that in determining whether an ERISA LTPT employee has a nonforfeitable right to employer contributions, each 12-month period for which the employee has at least 500 hours of service is treated as a year of service. For purposes of section 203(b)(4) of ERISA, 12-month periods must be determined in the same manner as under the last sentence of section 202(a)(3)(A) of ERISA, except that 12-month periods beginning before January 1, 2023, are not taken into account. Section 203(b)(4) of ERISA uses different language from the special vesting rules of section 401(k)(15)(B)(iii) and (iv) of the Code with respect to section 401(k) LTPT employees.[5]

III. GUIDANCE ON THE APPLICATION OF SECTION 403(b)(12) TO ERISA LTPT EMPLOYEES

Q-1: Do the eligibility rules for ERISA LTPT employees under section 202(c) of ERISA apply to a section 403(b) plan that is not subject to title I of ERISA?

A-1: No. Although section 125(a)(2)(B)(i) of the SECURE 2.0 Act provides a conforming amendment to section 403(b)(12)(A) of the Code that references section 202(c) of ERISA, the conforming amendment to the Code does not cause the eligibility rules for ERISA LTPT employees under section 202(c) of ERISA to apply to a section 403(b) plan that is not subject to title I of ERISA. Thus, for example, a governmental plan under section 3(32) of ERISA (which is not subject to title I of ERISA pursuant to section 4(b) of ERISA) is not subject to the eligibility rules for ERISA LTPT employees under section 202(c) of ERISA.

Q-2: Is a section 403(b) plan that is subject to ERISA required to provide the right to make elective deferrals to a part-time employee who qualifies as an ERISA LTPT employee?

A-2: Yes. The part-time employee exclusion is a statutory exclusion based on service and applies to employees who normally work less than 20 hours per week. A part-time employee who also qualifies as an ERISA LTPT employee (by meeting the standards under section 202(c) of ERISA) is covered by the eligibility rules for ERISA LTPT employees under section 202(c) of ERISA. Accordingly, unless another statutory exclusion applies, a section 403(b) plan that is subject to ERISA must provide the right to make elective deferrals to a part-time employee who qualifies as an ERISA LTPT employee. In contrast, a part-time employee who does not qualify as an ERISA LTPT employee (for example, because the employee has not worked 2 consecutive years of 500 hours) is not covered by the eligibility rules for ERISA LTPT employees under section 202(c) of ERISA.

Q-3: May a section 403(b) plan that is subject to ERISA continue to retain a part-time employee exclusion for part-time employees who do not qualify as ERISA LTPT employees?

A-3: Yes. A section 403(b) plan that is subject to ERISA may continue to retain a part-time employee exclusion for part-time employees who do not qualify as ERISA LTPT employees. Excluding part-time employees who do not qualify as ERISA LTPT employees will not cause the plan to violate the section 403(b) consistency requirement under § 1.403(b)-5(b)(4)(i), which prevents a plan from selectively applying the part-time employee

[4] For a section 403(b) plan, section 403(b)(1)(C) of the Code requires that an employee's rights under a section 403(b) annuity contract be nonforfeitable. However, § 1.403(b)-3(d)(2) provides rules that treat unvested amounts as if they are under a separate annuity contract from the vested amounts and provides that the separate annuity contract for unvested amounts is subject to section 403(c).

[5] For example, section 401(k)(15)(B)(iii) provides a special vesting rule that applies to employees described in section 401(k)(15)(B)(i) ("employees who *are* eligible to participate in the arrangement solely by reason of" the eligibility rules for section 401(k) LTPT employees under section 401(k)(2)(D)(ii)), and section 401(k)(15)(B)(iv) provides a separate rule for former section 401(k) LTPT employees that references the special vesting rule. (Emphasis added.) In contrast, section 203(b)(4) of ERISA applies to an "employee who *became* eligible to participate … solely by reason of" the eligibility rules for ERISA LTPT employees under section 202(c)(1)(B) of ERISA, and section 203(b)(4) of ERISA does not include a separate rule for former ERISA LTPT employees. (Emphasis added.) As described in section VI of this notice, the Treasury Department and the IRS anticipate issuing guidance with respect to the vesting rules of section 203(b)(4) of ERISA.

exclusion to some, but not all, part-time employees. Because the eligibility rules for ERISA LTPT employees under section 202(c) of ERISA are new statutory requirements, plans would not be selectively applying the part-time employee exclusion by continuing to exclude from making elective deferrals part-time employees who do not qualify as ERISA LTPT employees.[6] The Treasury Department and the IRS anticipate updating the section 403(b) consistency requirement under § 1.403(b)-5(b)(4)(i) in a manner consistent with this Q&A A-3.

Q-4: Is a section 403(b) plan that is subject to ERISA required to provide the right to make elective deferrals to a student employee who qualifies as an ERISA LTPT employee?

A-4: No. The student employee exclusion in section 403(b)(12)(A) of the Code is a statutory exclusion based on a classification (students performing services described in section 3121(b)(10)), rather than on service.[7] Therefore, a section 403(b) plan that is subject to ERISA may continue to exclude a student employee from making elective deferrals under the plan regardless of whether the individual qualifies as an ERISA LTPT employee.[8]

Q-5: May an employer with a section 403(b) plan that is subject to ERISA exclude ERISA LTPT employees for purposes of determining whether matching contributions satisfy the nondiscrimination requirements applicable to a section 403(b) plan under section 401(m)(2)?

A-5: Yes. Section 403(b)(12)(D)(i)(II) provides that an employer with a section 403(b) plan that is subject to ERISA may exclude ERISA LTPT employees from certain nondiscrimination requirements, including section 401(m)(2). Thus, an employer with a section 403(b) plan that is subject to ERISA may exclude ERISA LTPT employees for purposes of applying the actual contribution percentage (ACP) test under section 401(m)(2). Similarly, because ACP safe harbors under section 401(m)(11) and (12) are alternative ways of being treated as satisfying the ACP test under section 401(m)(2), this exclusion of ERISA LTPT employees from section 401(m)(2) also is treated as applying under section 401(m)(11) and (12). Accordingly, plans that use the ACP safe harbor under section 401(m)(11) or (12) are not required to provide safe harbor contributions to ERISA LTPT employees.

Q-6: Can an employer use section 403(b)(12)(D) to continue to exclude an ERISA LTPT employee who later becomes eligible to participate in the plan for reasons other than the eligibility rules for ERISA LTPT employees under section 202(c)(1)(B) of ERISA (a former ERISA LTPT employee) from receiving nonelective or matching contributions or from the application of the nondiscrimination requirements in sections 401(a)(4), 401(m)(2), and 410(b) of the Code?

A-6: No. Section 403(b)(12)(D) applies to "employees who *are* eligible to participate in the [salary reduction] agreement *solely by reason of*" the eligibility rules for ERISA LTPT employees under section 202(c)(1)(B) of ERISA. (Emphasis added.) Thus, if an ERISA LTPT employee becomes a former ERISA LTPT employee for a year (for example, because the employee has worked 1,000 hours in the preceding year and is no longer a part-time employee under § 1.403(b)-5(b)(4)(iii)(B)), then section 403(b)(12)(D) of the Code no longer applies to that former ERISA LTPT employee. Accordingly, an employer cannot use section 403(b)(12)(D) to exclude a former ERISA LTPT employee from receiving nonelective or matching contributions or from the application of the nondiscrimination requirements under sections 401(a)(4), 401(m)(2), and 410(b).[9]

IV. APPLICABILITY DATE

This notice applies for plan years beginning after December 31, 2024.

V. APPLICABILITY DATE OF FINAL REGULATION FOR SECTION 401(k) LTPT EMPLOYEES

The final regulation related to section 401(k) LTPT employees will apply no earlier than to plan years that begin on or after January 1, 2026.

VI. FUTURE GUIDANCE FOR ERISA LTPT EMPLOYEES

The Treasury Department and the IRS anticipate issuing proposed regulations with respect to section 403(b)(12)(D) and guidance with respect to sections 202(c) and 203(b)(4) of ERISA. The Treasury Department and the IRS anticipate that the guidance generally will be similar to final regulations with respect to section 401(k) LTPT employees.

VII. COMMENTS

Comments are requested on the content of this notice, including the application of section 403(b)(12)(D) of the Code and section 125 of the SECURE 2.0 Act to section 403(b) plans. Additionally, comments are requested on any rules with respect to section 401(k) LTPT employees (including former section 401(k) LTPT employees) that should apply differently for ERISA LTPT employees under section 403(b) plans. Comments should be submitted in writing on or before December 20, 2024 and should include a reference to Notice 2024-73. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "Notice 2024-73" in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2024-73),
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044.

[6] To retain a part-time employee exclusion and meet the section 403(b) consistency requirement, a plan must continue to exclude from making elective deferrals all part-time employees who do not qualify as ERISA LTPT employees.

[7] Although § 31.3121(b)(10)-2(d) provides that hours worked is a factor in determining whether an employee is a student, as well as providing an unsafe harbor if an employee normally works at least 40 hours per week (which is equivalent to 2,000 hours a year), the statutory student exclusion is not based principally on service.

[8] Similarly, the nonresident alien exclusion and the exclusion for employees otherwise eligible under another section 403(b) plan, an eligible governmental section 457(b) plan, or a section 401(k) plan sponsored by the same employer are section 403(b)(12)(A) statutory exclusions based on classifications, rather than on service.

[9] If section 403(b)(12)(D) does not apply, then the general nondiscrimination rules for nonelective and matching contributions of section 403(b)(12)(A)(i) apply to a former ERISA LTPT employee.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

VIII. DRAFTING INFORMATION

The principal author of this notice is Patrick Gutierrez of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, please contact Mr. Gutierrez at (202) 317-4148 (not a toll-free number).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part 1, §§ 142 and 42)

Rev. Proc. 2024-38

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding the income requirements for qualified residential rental projects financed with exempt facility bonds under § 142(d) of the Internal Revenue Code of 1986, as amended (Code)[1] and for qualified low-income housing projects under § 42, certain income requirement provisions of which cross-reference to § 142(d). Specifically, this revenue procedure provides guidance on the effect on the income requirements under §§ 142(d) and 42 of the alternative income eligibility requirements for the Department of Housing and Urban Development–Veterans Affairs Supportive Housing (HUD–VASH) program, set forth in the notice published by the Department of Housing and Urban Development (HUD) in the Federal Register on August 13, 2024, 89 F.R. 65769 (HUD–VASH Notice).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term "qualified bond" includes any private activity bond that is an exempt facility bond.

.02 Section 142(a)(7) provides that the term "exempt facility bond" includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects. Section 142(d)(1) generally provides that the term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, the project meets one of the two tests specified in § 142(d)(1)(A) and (B) as elected by the issuer at the time of the issuance of the issue with respect to the project. Under § 142(d)(1)(A), a residential rental project meets the test if 20 percent or more of the residential units in the project are occupied by individuals whose income is 50 percent or less of area median gross income. Under § 142(d)(1)(B), the project meets the test if 40 percent or more of the residential units in the project are occupied by individuals whose income is 60 percent or less of area median gross income.

.03 Section 142(d)(2)(B)(i) provides, in general, that income of individuals and area median gross income shall be determined by the Secretary of the Treasury or her delegate in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937, hereinafter referred to as "Section 8 of the USHA of 1937" or "Section 8."[2]

.04 Section 142(d)(3) provides rules for income determinations. Section 142(d)(3)(A) generally provides that, for purposes of § 142(d), the determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.

.05 Section 1.103-8(b)(8)(v) of the Income Tax Regulations[3] provides in relevant part that individuals and families of low or moderate income shall be determined in a manner consistent with determinations of lower income families under Section 8 of the USHA of 1937, as amended. Additionally, § 1.103-8(b)(8)(v) provides that the method of determining low or moderate income in effect on the date of issue of the exempt facility bonds financing the qualified residential rental project will be determinative for such issue, even if such method is subsequently changed.

.06 Section 42(g)(4) provides that the rules in § 142(d)(2)(B)(i) regarding income determinations shall apply for purposes of determining whether any project is a qualified low-income housing project (as defined in § 42(g)) and whether any unit is a low-income unit (as defined in § 42(i)(3)); except that, in applying those provisions for those purposes, the term "gross rent" shall have the meaning given such term by § 42(g)(2)(B). The determination whether a unit is a low-income unit includes determinations that the individuals occupying the unit meet the income limitation applicable to the unit under § 42(g)(1), that the unit is rent-restricted as defined in § 42(g)(2), and that the unit is suitable for occupancy, *see* § 42(i)(3)(B).

.07 Section 1.42-5(b)(1)(vi) provides that owners of a low-income housing project must be required to keep records to show for each year in the compliance period the annual income certification of each low-income tenant group per unit.[4] In § 42(g)(8)(B), there is an exception to this recertification requirement for a 100 percent low-income building.

.08 Section 1.42-5(b)(1)(vii) provides that tenant income is calculated in a man-

[1] Unless otherwise specified, all "Section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).
[2] The definition of income for the programs authorized under the USHA of 1937, including the Section 8 programs, is found in section 3(b) of that Act.
[3] Regulations have not been promulgated under § 142(d). The regulations promulgated under § 103(b)(4) of the Internal Revenue Code of 1954 (1954 Code), the predecessor to § 142(d) of the Code, continue to apply to bonds issued to finance residential rental projects, except as otherwise modified by the Tax Reform Act of 1986 (1986 Act), Public Law 99-514, 100 Stat. 2085 (1986), 1986-3 (Vol. 1) C.B. 519-575, and subsequent law. In the 1986 Act, §§ 103 and 103A of the 1954 Code regarding tax-exempt bonds were reorganized into § 103 and §§ 141 through 150 of the Code. Congress intended that to the extent not amended by the 1986 Act, all principles of pre-1986 Act law would continue to apply to the reorganized provisions. *See* 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-686 (1986), 1986-3 (Vol. 4) C.B. 686.
[4] Under § 42(i)(1), the compliance period with respect to any building is the period of 15 taxable years beginning with the first taxable year of the credit period with respect to the building.

ner consistent with the determination of annual income under Section 8 of the USHA of 1937, not in accordance with the determination of gross income for Federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of § 1.42-5(b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under § 42(g).

.09 Notice 88-80, 1988-2 C.B. 396, informed taxpayers that regulations to be issued under § 42(g)(1) (relating to the determination of a qualified low-income housing project) would provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under Section 8 of the USHA of 1937. Notice 88-80 referred to 24 CFR 813.106 for the definition of annual income under Section 8. (The regulatory provisions cited have since been recodified, and 24 CFR 5.609 now defines annual income for purposes of Section 8.) The notice also clarified that the income of individuals and area median gross income (adjusted for family size) for purposes of § 42(g)(1) does not refer to items of income used in determining gross income for purposes of computing Federal income tax liability.

.10 On August 13, 2024, HUD published the HUD–VASH Notice, which is titled "Section 8 Housing Choice Vouchers: Revised Implementation of the HUD–Veterans Affairs Supportive Housing Program." This HUD notice sets forth the policies and procedures for the administration of eligibility for, and amount of, tenant-based and project-based Section 8 Housing Choice Voucher rental assistance under the HUD–VASH program. The HUD-VASH program combines HUD's Housing Choice rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) to assist veterans experiencing homelessness. That program is administered by local public housing agencies (PHAs) that have partnered with local VA medical facilities or other entities as designated by the Secretary of Veterans Affairs. Among other guidance, the HUD–VASH Notice provides new requirements for determining income for purposes of eligibility of HUD–VASH applicants that receive VA service-connected disability benefits.

.11 The HUD–VASH Notice seeks to ensure that homeless veterans are not excluded from participation in the HUD–VASH program because of their VA service-connected disability benefits. In particular, the HUD–VASH Notice seeks to ensure disabled veterans' opportunity to reside in HUD–VASH project-based-voucher housing, located either on the site of a VA facility or where HUD–VASH supportive services are provided on-site at the housing. To achieve these goals, HUD is exercising its waiver authority and is establishing new requirements for determining income for purposes of eligibility for HUD–VASH. Specifically, for HUD–VASH applicants receiving VA service-connected disability benefits, HUD is waiving section 3(b) of the USHA of 1937.[5] That section applies for purposes of determinations of lower income family eligibility based on area median income under the USHA of 1937, including Section 8 programs. HUD is also waiving 24 CFR 5.609(a)(1), which provides that annual income includes all amounts not specifically excluded in 24 CFR 5.609(b). (These waivers, together, are hereinafter referred to as "the HUD–VASH income eligibility waiver.") HUD-VASH Notice, 89 FR 65773. As an alternative requirement, the PHA must determine the HUD–VASH applicant's annual income for purposes of income eligibility by excluding all VA service-connected disability benefits received by the applicant in addition to the income exclusions listed under 24 CFR 5.609(b). *Id*. This special income exclusion applies only to the definition of annual income for purposes of determining income eligibility. *Id*.

.12 Section 4.01 and Section 4.02 of this revenue procedure provide the same exclusion for purposes of § 142(d)(2) and (3) and § 42, respectively.[6] This exclusion mirrors the HUD–VASH income eligibility waiver because § 142(d)(2)(B)(i) requires that the income of individuals and area median gross income be determined in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the USHA of 1937.

SECTION 3. SCOPE

This revenue procedure applies for purposes of determining income under §§ 142(d) and 42 of prospective and current tenants who, as of the date of the income determination, are approved to receive or are currently receiving assistance under the HUD–VASH program and to whom the HUD–VASH income eligibility waiver applies (In-scope Tenants).

SECTION 4. APPLICATION

.01 For purposes of initial and continuing income determinations under § 142(d)(2) and (3), respectively, all VA service-connected disability benefits are excluded from income, consistent with the HUD–VASH income eligibility waiver, for In-scope Tenants.

.02 For purposes of initial and continuing income determinations with respect to whether any project is a qualified low-income housing project (as defined in § 42(g)), and whether any unit is a low-income unit (as defined in § 42(i)(3)), all VA service-connected disability benefits are excluded from income, consistent with the HUD–VASH income eligibility waiver, for In-scope Tenants.

SECTION 5. EFFECTIVE DATE

.01 This revenue procedure applies to income determinations with respect to residential rental projects financed with exempt facility bonds under § 142(d) issued as part of an issue with an issue date on or after October 24, 2024. This revenue procedure may be applied to income determinations with respect to

[5] *See* explanation in footnote 2 above.

[6] Section 42(g)(4) makes § 142(d)(2) applicable for satisfying the requirements to be a qualified low-income housing project and to be a low-income unit. Thus, § 142(d)(2) applies under § 42 for determining tenant income.

residential rental projects financed with exempt facility bonds under § 142(d) issued as part of an issue with an issue date before October 24, 2024, notwithstanding the provision of § 1.103-8(b)(8)(v) that states that the method of determining low or moderate income in effect on the date of issue will be determinative for such issue, even if such method is subsequently changed.

.02 This revenue procedure applies to income determinations with respect to qualified low-income housing projects (as defined in § 42(g)), and low-income units (as defined in § 42(i)(3)) on or after October 24, 2024.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Jian H. Grant, Zoran Stojanovic, and Brian Choi of the Office of Associate Chief Counsel (Financial Institutions & Products), and James A. Holmes of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure relating to residential rental projects under § 142(d), contact Mr. Choi on (202) 317-3154; for further information regarding this revenue procedure relating to the low-income housing credit under § 42, please contact Mr. Holmes on (202) 317-4137 (not toll-free numbers).

Part IV

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

Announcement 2024-35

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on September 27, 2024, and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Name Of Organization	Effective Date of Revocation	Location
Academy School of Excellence, Inc.	1/1/2020	Ft. Lauderdale, FL
Bluediimon Foundation, Inc.	1/1/2020	Desoto, TX.

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.

Finding List of Current Actions on Previously Published Items[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.

Internal Revenue Service
Washington, DC 20224

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INTERNAL REVENUE BULLETIN

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

We Welcome Comments About the Internal Revenue Bulletin

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