

HIGHLIGHTS OF THIS ISSUE

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.

INCOME TAX

T.D. 9594, page 57.

Final regulations under section 1502 of the Code provide for an election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. Pursuant to the election, the liquidation, followed by a recontribution of assets, will be recharacterized as a cross-chain reorganization, rather than a liquidation or an upstream reorganization followed by a drop of assets.

REG-134935-11, page 64.

Proposed regulations under section 904(f)(3) of the Code provide proposed rules regarding the recapture of overall foreign losses on certain dispositions of property, as well as the coordination of the rules for determining high-taxed income under section 904(d) with section 904(b), (f) and (g).

Notice 2012-45, page 59.

This notice provides guidance under section 1297 of the Code regarding the treatment of income from certain government bonds held by certain active banks for purposes of determining whether a foreign corporation is a passive foreign investment company (PFIC).

EMPLOYEE PLANS

REG-113738-12, page 66.

Proposed regulations under section 411(d)(6) of the Code provide guidance under the anti-cutback rules which generally prohibit plan amendments eliminating or reducing accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans. These proposed regulations would provide an additional limited

exception to the anti-cutback rules to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other optional form of benefit providing for accelerated payments) under the plan if certain specified conditions are satisfied. A public hearing is scheduled for August 24, 2012.

REG-153627-08, page 60.

Proposed regulations under sections 6057 and 6081 of the Code relate to the reporting and notice requirements for deferred vested benefits. These proposed regulations would affect administrators of, employers maintaining, participants in, and beneficiaries of, plans that are subject to the reporting and participant notice requirements.

Finding Lists begin on page ii.



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Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force 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 and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 368.—Definitions Relating to Corporate Reorganizations

Final regulations under section 1502 of the Code provide for an election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. Pursuant to the election, the liquidation, followed by a recontribution of assets, will be recharacterized as a cross-chain reorganization, rather than a liquidation or an upstream reorganization followed by a drop of assets. See T.D. 9594, page 57.

Section 1502.—Regulations

26 CFR 1.1502–13: *Intercompany transactions.*

T.D. 9594

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

Modification to Consolidated Return Regulation Permitting an Election to Treat a Liquidation of a Target, Followed by a Recontribution to a New Target, as a Cross-Chain Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code (Code). These final regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. These regulations apply to corporations filing consolidated income tax returns.

DATES: *Effective Date:* These regulations are effective on June 20, 2012.

Applicability Date: The changes reflected in these final regulations

(§1.1502–13(f)(5)(ii)(B)(I) and (2)) generally apply to transactions in which T's liquidation into B occurs on or after October 25, 2007. For transactions in which T's liquidation into B occurs before October 25, 2007, §1.1502–13(f)(5)(ii)(B)(I) and (2) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009, continue to apply.

FOR FURTHER INFORMATION CONTACT: Michael R. Gould, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1433. The collection of information in these final regulations is required in order for the parent of a consolidated group to make the election found in §1.1502–13(f)(5)(ii)(B).

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1. On September 4, 2009, the IRS and Treasury Department published temporary (T.D. 9458, 2009–43 I.R.B. 547) and proposed (REG–139068–08, 2009–43 I.R.B. 558) regulations in the **Federal Register** (74 FR 45757 and 74 FR 45789, respectively). The regulations modify the election under which a consolidated

group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. On March 4, 2011, the IRS and Treasury Department published final regulations in the **Federal Register** (T.D. 9515, 2011–14 I.R.B. 599 [76 FR 11956]), which republished the 2009 temporary regulations without substantive change, to make a minor correction to the ordering of the regulations as they appeared in the **Federal Register**. The IRS and the Treasury Department received no comments responding to the proposed and temporary regulations. No public hearing was requested or held. Therefore, this document adopts the provisions of the proposed regulations with no substantive change and the corresponding temporary regulations are removed. See §601.601(d)(2).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation primarily affects members of consolidated groups which tend to be large corporations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting Information

The principal authors of these final regulations are Mary W. Lyons, formerly of the Office of Associate Chief Counsel (Corporate), and Michael R. Gould of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1502–13T to read in part as follows:

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

Section 1.1502–13 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–13 is amended by revising paragraphs (f)(5)(ii)(B)(1) and (2) and adding new paragraph (f)(5)(ii)(F) to read as follows:

§1.1502–13 Intercompany transactions.

* * * *

- (f) * * *
- (5) * * *
- (ii) * * *

(B) *Section 332—(I) In general.* If section 332 would otherwise apply to T’s (old T’s) liquidation into B, and B transfers substantially all of old T’s assets to a new member (new T), and if a direct transfer of substantially all of old T’s assets to new

T would qualify as a reorganization described in section 368(a), then, for all Federal income tax purposes, T’s liquidation into B and B’s transfer of substantially all of old T’s assets to new T will be disregarded and instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock and the assumption of T’s liabilities in a reorganization described in section 368(a). (Under paragraph (j)(1) of this section, B’s stock in new T would be a successor asset to B’s stock in old T, and S’s gain would be taken into account based on the new T stock.)

(2) *Time limitation and adjustments.* The transfer of old T’s assets to new T qualifies under paragraph (f)(5)(ii)(B)(1) of this section only if B has entered into a written plan, on or before the due date of the group’s consolidated income tax return (including extensions) for the tax year that includes the date of old T’s liquidation, to transfer the old T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated income tax return (including extensions) for the tax year that includes the date of the liquidation. However, in the case of a liquidation of old T on or after October 25, 2007, by a taxpayer whose original tax return for the year of liquidation was filed on or before November 3, 2009, see §1.1502–13T(f)(5)(ii)(F)(3) as contained in 26 CFR part 1, revised April 1, 2012. In either case, the transfer of substantially all of T’s assets to new T must be completed within 12 months of the filing of the return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect

any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under paragraph (f)(3) of this section as acquired by new T but distributed to B immediately after the reorganization.

* * * *

(F) *Effective/applicability date—(1) General rule.* Paragraphs (f)(5)(ii)(B)(1) and (2) of this section apply to transactions in which old T’s liquidation into B occurs on or after October 25, 2007.

(2) *Prior periods.* For transactions in which old T’s liquidation into B occurs before October 25, 2007, see paragraphs (f)(5)(ii)(B)(1) and (2) of this section in effect prior to October 25, 2007, as contained in 26 CFR part 1, revised April 1, 2009.

* * * *

§1.1502–13T [Removed].

Par. 3. Section §1.1502–13T is removed.

Part 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers

* * * *

- (b) * * *

CFR part or section where Identified and described	Current OMB control No.
* * * *	
1.1502–13	1545–1433
* * * *	

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Emily S. McMahon,
(Acting) Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on June 19, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 20, 2012, 77 F.R. 36914)

Approved June 11, 2012.

Part III. Administrative, Procedural, and Miscellaneous

Treatment of Income From Certain Government Bonds for Purposes of the Passive Foreign Investment Company Rules

Notice 2012-45

SECTION 1. PURPOSE

This notice provides guidance regarding the treatment of certain government bonds for purposes of determining whether a foreign corporation is a passive foreign investment company (PFIC).

SECTION 2. BACKGROUND

Section 1297(a) provides that a PFIC is any foreign corporation if 75 percent or more of its gross income for the taxable year is passive income or the average percentage of assets held by the corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent. Section 1297(b)(1) provides that passive income means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c), subject to the exceptions of section 1297(b)(2). Under section 1297(b)(2)(A), the term “passive income” does not include any income derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States or, to the extent provided in regulations, by any other corporation (active banking exception).

In Notice 89-81, 1989-2 C.B. 399, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) described rules that would expand the active banking exception to certain foreign corporations not licensed

to do business as a bank in the United States, and identified the types of banking activities that produce income excluded from passive income under the active banking exception. In 1995, the IRS and the Treasury Department issued proposed regulations on the active banking exception. Prop. Reg. § 1.1296-4.

SECTION 3. QUALIFYING FOREIGN GOVERNMENT BONDS HELD BY ACTIVE BANKS

Recent economic conditions have resulted in a shift in the assets held by some non-U.S. financial institutions. As a result of these conditions, certain financial institutions are holding government bonds at higher than historical levels. These increased levels have raised an issue concerning the treatment of these financial institutions, and specifically the treatment of government bonds, under the PFIC rules.

This notice announces that, solely for purposes of section 1297 and the taxable years provided in Section 4 of this notice, the income from Qualifying Government Bonds held by an Active Bank qualifies for the active banking exception.

For purposes of this notice, the following terms have the meanings set forth below:

Active Bank. For any taxable year set forth in Section 4 of this notice, an Active Bank is a foreign corporation that:

(i) would not be a PFIC for such taxable year as a result of the application of the active banking exception if the treatment of Qualifying Government Bonds described in this Section 3 applied (and taking into account, if applicable, section 1297(c));

(ii) was not in any prior taxable year beginning in the preceding five calendar years a PFIC, in each case as a result of the application of the active banking ex-

ception (taking into account, if applicable, the treatment of Qualifying Government Bonds described in this Section 3 for taxable years set forth in Section 4 of this notice and section 1297(c)); and

(iii) is, and was in each taxable year beginning in the preceding five calendar years, a publicly traded corporation. For purposes of this notice, a corporation will be treated as a publicly traded corporation if (1) one or more classes of stock is regularly traded on a qualified exchange or other market (within the meaning of § 1.1296-2), or (2) at least 50 percent of the aggregate vote and value of the shares in the corporation is owned directly or indirectly by another corporation described in clause (1) of this subparagraph.

Qualifying Government Bond. Qualifying Government Bond means a bond or similar instrument that has been issued by the government of the country (or any political subdivision, agency, instrumentality, or local authority thereof) under the laws of which the Active Bank is created or organized.

SECTION 4. EFFECTIVE/ APPLICABILITY DATE

This notice shall apply to taxable years of foreign corporations beginning in 2011, 2012, and 2013.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Kristine Crabtree of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Ms. Crabtree at (202) 622-3840 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Reporting and Notice Requirements for Deferred Vested Benefits Under Section 6057

REG-153627-08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance relating to automatic extensions of time for filing certain employee plan returns by adding the Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits," to the list of forms that are covered by the Income Tax Regulations on automatic extensions. The proposed regulations would also provide guidance on applicable reporting and participant notice rules that require certain plan administrators to file registration statements and provide notices that set forth information for deferred vested participants. These regulations would affect administrators of, employers maintaining, participants in, and beneficiaries of plans that are subject to the reporting and participant notice requirements.

DATES: Comments and requests for a public hearing must be received by September 19, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-153627-08), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-153627-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-153627-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Gibbs, Sarah Bolen, or Pamela Kinard at (202) 622-6060; concerning the submission of comments or to request a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under 1545-2187 and 1545-0212. Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington D.C. 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:M:S; Washington DC 20224. Comments on the collection of information should be received by August 20, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §§301.6057-1 and 1.6081-11. This information is required in order to comply with the re-

porting and notice requirements of section 6057 and to provide automatic extensions of time for filing certain employee plan returns under section 6081. Information relating to these proposed regulations will be collected through Form 8955-SSA and Form 5558. This information relates to plan participants who separate from service covered under the plan and who are entitled to deferred vested retirement benefits under the plan. Any burden relating to these proposed regulations will be included and reported in the next revisions of Form 8955-SSA and Form 5558, after these proposed regulations are accepted as final.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 6057(a) of the Internal Revenue Code (Code) requires the administrator of a plan that is subject to the vesting standards of section 203 of the Employee Retirement Income Security Act of 1974 (ERISA) to file, within the time prescribed by regulations, a registration statement with the Secretary of the Treasury. The registration statement sets forth certain information relating to the plan, plan participants who separate from service covered by the plan and are entitled to deferred vested retirement benefits, and the nature, amount, and form of deferred vested retirement benefits to which the plan participants are entitled.

Section 6057(b) provides that any plan administrator required to register under section 6057(a) shall, within the time prescribed by regulations, also notify the Secretary of any change in the name of the plan or the name and address of the plan administrator, the termination of the plan, or the merger or consolidation of the plan

with any other plan or its division into two or more plans.

Section 6057(c) provides that, to the extent provided in regulations prescribed by the Secretary, the administrator of a plan not subject to the reporting requirements of section 6057(a) (including a governmental plan within the meaning of section 414(d) or a church plan within the meaning of section 414(e)) may at its option file such information as the plan administrator may wish to file with respect to the deferred retirement vested benefit rights of any plan participant separated from service covered by the plan.

Section 6057(d) requires the Secretary to transmit copies of any statements, notifications, reports, or other information obtained by the Secretary under section 6057 to the Commissioner of Social Security.

Section 6057(e) of the Code and section 105(c) of ERISA require each plan administrator that is subject to the reporting requirements of section 6057 to furnish to each deferred vested participant an individual statement setting forth the information required by section 6057(a)(2). The individual statement required by section 6057(e) must also notify each participant of any benefits that are forfeitable if the participant dies before a certain date. The individual statement must be furnished no later than the date for filing the registration statement required under section 6057(a).

Section 6057(f)(1) provides that the Secretary, after consultation with the Commissioner of Social Security, may issue such regulations as may be necessary to carry out the provisions of this section.

Since the enactment of ERISA, the Schedule SSA, a schedule to the Form 5500, “*Annual Return/Report of Employee Benefit Plan*,” has been the form used by plan administrators to comply with the reporting requirements of section 6057. On July 21, 2006, the Department of Labor (DOL) published a final rule in the **Federal Register** (71 FR 41359) requiring electronic filing of the Form 5500 series for plan years beginning after January 1, 2008. On November 16, 2007, the DOL published a final rule in the **Federal Register** (72 FR 64710) postponing the effective date of the electronic filing mandate to apply to plan years beginning on or after January 1, 2009. See 29 CFR §2520.104a-2.

In order to implement the DOL’s mandate for electronic filing of the Form 5500, the IRS-only schedules to the Form 5500, including the Schedule SSA, were eliminated from the Form 5500. One result of the elimination of the Schedule SSA is that Form 5500 filings that include Schedule SSA information regarding participants are now subject to rejection (even for late or amended filings for plan years before 2009). The Schedule SSA was replaced by Form 8955-SSA, “*Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*,” an IRS-only stand-alone form. Announcement 2011-21, 2011-12 I.R.B. 567, see §601.601(d)(2), designates Form 8955-SSA as the form to be used to satisfy the reporting requirements of section 6057 for plan years beginning on or after January 1, 2009. Announcement 2011-21 also established an annual due date for the filing of the Form 8955-SSA. In general, if a Form 8955-SSA must be filed for a plan year, it must be filed by the last day of the 7th month following the last day of that plan year (plus extensions).

Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any required return, declaration, statement, or other document. Except for certain taxpayers, the extension of time shall not exceed 6 months.

Section 1.6081-1(a) of the Income Tax Regulations provides that the Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document that relates to any tax imposed under subtitle A of the Code. Under §1.6081-1(b), the application must be in writing, be signed by the taxpayer or his representative, and set forth the reason for requesting an extension.

Section 1.6081-11 of the regulations provides that a plan administrator or sponsor of an employee benefit plan required to file a Form 5500 will be allowed an automatic extension of the time to file the Form 5500. To receive an automatic extension of time to file, the plan administrator or sponsor must complete a Form 5558, “*Application for Extension of Time to File Certain Employee Plan Returns*,” and file the application with the Internal Revenue Service on or before the date that the Form 5500 series return must be filed.

Form 5558 is used to request an automatic extension of time to file a Form 5500 return or Form 8955-SSA. In accordance with §1.6081-11 and Form 5558 (including instructions), an application for an extension of time to file a Form 5500 series return need not be signed. However, in accordance with §1.6081-1, Form 5558 provides that an application for an extension of time to file Form 8955-SSA must be signed.

Explanation of Provisions

After the current version of the Form 5558 was issued, several comments were received that questioned the need for a signature to extend the time for filing Form 8955-SSA, particularly since a signature is not required to extend the time to file a Form 5500 series return. The commentators noted that, like its predecessor, the Schedule SSA, the Form 8955-SSA is generally prepared in conjunction with the preparation of a plan’s Form 5500. They also stated that a signature requirement for the Form 8955-SSA is likely to cause confusion and missed deadlines because of the different rule for the Form 5500. Finally, the commentators contended that the signature requirement is burdensome for both filers and the IRS because the requirement complicates the extension request process.

The proposed regulations would amend §1.6081-11, relating to automatic extensions of time for filing certain employee plan returns, by adding the Form 8955-SSA to the list of forms that are covered by the automatic 2½ month extension that applies by filing Form 5558. This will permit a plan administrator to receive an automatic extension of 2½ months by submitting, on or before the general due date of the Form 8955-SSA, a Form 5558 indicating that an extension is being requested for filing the Form 8955-SSA. Thus, under the proposed regulations, the same rules that apply to request an extension of time to file the Form 5500 series would also apply to request an extension of time to file Form 8955-SSA. In addition, the proposed regulations would amend §1.6081-11 to provide that a signature would not be required to request an extension of time to file Form 5500 and Form 8955-SSA. It is anticipated that the Form 5558 and instructions will be

revised to reflect this change for the Form 8955-SSA.

In addition, pursuant to section 6011(a), these proposed regulations would formally designate the Form 8955-SSA as the form used to satisfy the reporting requirements of section 6057. These proposed regulations would retain the general reporting requirements that applied to the Schedule SSA with certain minor modifications.

As discussed in the background section of this preamble, section 6057(a) requires the plan administrator (within the meaning of section 414(g)) of a plan that is subject to the vesting standards of section 203 of ERISA to file, within the time prescribed by regulations, a registration statement that sets forth certain information on deferred vested participants. Under existing §301.6057-1(c)(1) of the Procedure and Administration regulations, the plan administrator of an employee benefit plan described in §301.6057-1(a)(3), or any other employee retirement benefit plan (including a governmental or church plan), may at its option file on the Schedule SSA information relating to the deferred vested retirement benefit of any plan participant who separates at any time from service covered under the plan. These proposed regulations would retain the ability of such plans to report deferred vested information on a voluntary basis but require that the information be submitted to the IRS on Form 8955-SSA. The proposed regulations would also delegate authority to the Commissioner of the Internal Revenue Service to provide special rules under section 6057 (including designating the form used to comply with section 6057) in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter). Finally, the proposed regulations would delete certain obsolete transition rules and update cross-references in §§1.6057-1 and 1.6057-2.

Proposed Effective Date

These regulations are generally proposed to be effective on or after June 21, 2012. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the guidance in these proposed regulations, those provisions of the

final regulations will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that maintain employee retirement income benefit plans use third party administrators to perform their recordkeeping function. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and Treasury Department request comments on all aspects of the proposed rules. All comments are available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Sarah R. Bolen and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS

and the Treasury Department participated in the development of these regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

Part 1—INCOME TAXES

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

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

Par. 2. Section 1.6081-11 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (b)(3).
3. Revising the paragraph heading of paragraph (d) and adding paragraph (d)(2).
4. Revising the paragraph heading of paragraph (e) and adding paragraph (e)(2).

The revisions and additions read as follows:

§1.6081-11 Automatic extension of time for filing certain employee plan returns.

(a) *In general.* An administrator or sponsor of an employee benefit plan required to file a return under the provisions of subpart E of part III of chapter 61 or the regulations under that chapter on Form 5500 (series), "Annual Return/Report of Employee Benefit Plan" or Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits," will be allowed an automatic extension of time to file the return until the 15th day of the third month following the date prescribed for filing the return if the administrator or sponsor files an application under this section in accordance with paragraph (b) of this section.

(b) * * *

(3) A signature is not required for an automatic extension of time to file Form 5500 (series) and Form 8955-SSA.

* * * * *

(d) *Penalties—(1) Form 5500.* * * *

(2) *Form 8955-SSA.* See section 6652 for penalties for failure to file a timely and complete Form 8955-SSA.

(e) *Effective/applicability dates—(1) Form 5500.* * * *

(2) *Form 8955-SSA*. This section is applicable for applications for an automatic extension of time to file Form 8955-SSA filed after June 21, 2012.

Part 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7508* * *

Par. 4. Section 301.6057-1 is amended by:

1. Revising paragraphs (a)(4) and (a)(5)(ii).

2. Removing paragraph (b)(2)(iii) and redesignating paragraph (b)(2)(iv) as (b)(2)(iii).

3. Revising newly designated paragraph (b)(2)(iii).

4. Revising paragraphs (b)(3)(ii), (b)(3)(iii), (c), (d), (f), and (g).

The revisions read as follows:

§301.6057-1 Employee retirement benefit plans; identification of participant with deferred vested retirement benefit.

(a) * * *

(4) *Filing requirements*—(i) *In general*. Information relating to the deferred vested retirement benefit of a plan participant must be filed on Form 8955-SSA, “*Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*.” Form 8955-SSA shall be filed on behalf of an employee retirement benefit plan for each plan year for which information relating to the deferred vested retirement benefit of a plan participant is filed under paragraph (a)(5) or (b)(2) of this section. There shall be reported on Form 8955-SSA the name and Social Security number of the participant, a description of the nature, form and amount of the deferred vested retirement benefit to which the participant is entitled, and such other information as is required by section 6057(a) or Form 8955-SSA and the accompanying instructions. The form of the benefit reported on Form 8955-SSA shall be the normal form of benefit under the plan, or, if the plan administrator (within the meaning of section 414(g)) considers it more appropriate, any other form of benefit.

(ii) *General due date for filing*. The forms prescribed by section 6057(a), including Form 8955-SSA, shall be filed in

the manner and at the time as required by the forms and related instructions applicable to the annual period.

(iii) *Delegation of authority to Commissioner*. The Commissioner may provide special rules under section 6057 (including designating the form used to comply with section 6057) in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) that the Commissioner determines to be necessary or appropriate with respect to the filing requirements under section 6057.

(5) * * *

(ii) *Exception*. Notwithstanding paragraph (a)(5)(i) of this section, no information relating to the deferred vested retirement benefit of a separated participant is required to be filed on Form 8955-SSA if, before the date such Form 8955-SSA is required to be filed (including any extension of time for filing granted pursuant to section 6081), the participant—

(A) Is paid some or all of the deferred vested retirement benefit under the plan;

(B) Returns to service covered under the plan; or

(C) Forfeits all of the deferred vested retirement benefit under the plan.

(b) * * *

(2) * * *

(iii) *Exception*. Notwithstanding paragraph (b)(2)(i) of this section, no information relating to a participant’s deferred vested retirement benefit is required to be filed on Form 8955-SSA if, before the date such Form 8955-SSA is required to be filed (including any extension of time for filing granted pursuant to section 6081), the participant—

(A) Is paid some or all of the deferred vested retirement benefit under the plan;

(B) Accrues additional retirement benefits under the plan; or

(C) Forfeits all of the deferred vested retirement benefit under the plan.

(3) * * *

(ii) *Inability to determine correct amount of participant’s deferred vested retirement benefit*. The plan administrator must indicate on Form 8955-SSA that the amount of a participant’s deferred vested retirement benefit showed therein may be other than that to which the participant is actually entitled if such amount is computed on the basis of plan records that

the plan administrator maintains and such records—

(A) Are incomplete with respect to the participant’s service covered by the plan (as described in paragraph (b)(3)(i) of this section); or

(B) Fail to account for the participant’s service not covered by the plan which is relevant to a determination of the participant’s deferred vested retirement benefit under the plan (as described in paragraph (b)(3)(i) of this section).

(iii) *Inability to determine whether participant vested in deferred retirement benefit*. Where, as described in paragraph (b)(3)(i) of this section, information to be reported on Form 8955-SSA is to be based upon records which are incomplete with respect to a participant’s service covered by the plan or which fail to take into account relevant service not covered by the plan, the plan administrator may be unable to determine whether or not the participant is vested in any deferred retirement benefit. If, in view of information provided either by the incomplete records or the plan participant, there is a significant likelihood that the plan participant is vested in a deferred retirement benefit under the plan, information relating to the participant must be filed on Form 8955-SSA with the notation that the participant may be entitled to a deferred vested benefit under the plan, but information relating to the amount of the benefit may be omitted. This paragraph (b)(3)(iii) does not apply in a case in which it can be determined from plan records maintained by the plan administrator that the participant is vested in a deferred retirement benefit. Paragraph (b)(3)(ii) of this section, however, may apply in such a case.

(c) *Voluntary filing*—(1) *In general*. The plan administrator of an employee retirement benefit plan described in paragraph (a)(3) of this section, or any other employee retirement benefit plan (including a governmental plan within the meaning of section 414(d) or a church plan within the meaning of section 414(e)), may, at its option, file on Form 8955-SSA information relating to the deferred vested retirement benefit of any plan participant who separates at any time from service covered by the plan.

(2) *Deleting previously filed information*. If, after information relating to the deferred vested retirement benefit of a plan

participant is filed on Form 8955-SSA (or a predecessor to Form 8955-SSA), the plan participant is paid some or all of the deferred vested retirement benefit under the plan or forfeits all of the deferred vested retirement benefit under the plan, the plan administrator may, at its option, file on Form 8955-SSA (or such other form as may be provided for this purpose) the name and Social Security number of the plan participant with the notation that information previously filed relating to the participant's deferred vested retirement benefit should be deleted.

(d) *Filing incident to cessation of payment of benefits*—(1) *In general*. No information relating to the deferred vested retirement benefit of a plan participant is required to be filed on Form 8955-SSA if before the date such Form 8955-SSA is required to be filed, some of the deferred vested retirement benefit is paid to the participant, and information relating to a participant's deferred vested retirement benefit which was previously filed on Form 8955-SSA (or a predecessor to Form 8955-SSA) may be deleted if the participant is paid some of the deferred vested retirement benefit. If payment of the deferred vested retirement benefit ceases before all of the benefit to which the participant is entitled is paid to the participant, information relating to the deferred vested retirement benefit to which the participant remains entitled shall be filed on the Form 8955-SSA filed for the plan year following the last plan year within which a portion of the benefit is paid to the participant.

(2) *Exception*. Notwithstanding paragraph (d)(1) of this section, no information relating to the deferred vested retirement benefit to which the participant remains entitled is required to be filed on Form 8955-SSA if, before the date such Form 8955-SSA is required to be filed (including any extension of time for filing granted pursuant to section 6081), the participant—

- (i) Returns to service covered by the plan;
- (ii) Accrues additional retirement benefits under the plan; or
- (iii) Forfeits the benefit under the plan.

* * * * *

(f) *Penalties*. For amounts imposed in the case of failure to file the report of deferred vested retirement benefits required

by section 6057(a) and paragraph (a) or (b) of this section, see section 6652(d)(1).

(g) *Effective/applicability date*—(1) *In general*. Except as otherwise provided in this paragraph (g), this section is applicable for filings on or after June 21, 2012.

(2) *Special effective date rules for periods before the general effective date*. Section 301.6057-1 of this chapter, as it appeared in the April 1, 2008 edition of 26 CFR part 301, applies for periods before the general effective date.

§301.6057-1 [Amended]

Par. 5. Section 301.6057-1 is amended by removing the language “schedule SSA” and adding “Form 8955-SSA” in its place.

Par. 6. Section 301.6057-2 is amended by revising paragraph (c) as follows: §301.6057-2 *Employee retirement benefit plans; notification of change in plan status*.

* * * * *

(c) *Penalty*. For amounts imposed in the case of failure to file a notification of a change in plan status required by section 6057(b) and this section, see section 6652(d)(2).

* * * * *

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 20, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 21, 2012, 77 F.R. 37352)

Notice of Proposed Rulemaking

Overall Foreign Loss Recapture on Property Dispositions

REG-134935-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance regarding the coordination of the rules for determining high-taxed income with capital gains adjustments and

the allocation and recapture of overall foreign losses and overall domestic losses, as well as the coordination of the recapture of overall foreign losses on certain dispositions of property and other rules concerning overall foreign losses and overall domestic losses. These regulations affect individuals and corporations claiming foreign tax credits.

DATES: Written or electronic comments and requests for a public hearing must be received by August 24, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-134935-11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134935-11), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-134935-11).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeffrey L. Parry, (202) 622-3850; concerning submissions of comments, Oluwafunmilayo (Funmi) Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

1. High-taxed income

Section 904(d)(2)(F) of the Internal Revenue Code (Code) provides that certain high-taxed income that would otherwise be passive income will be treated as general category income if the foreign taxes paid or accrued, and deemed paid or accrued, with respect to such income exceeds the highest rate of tax specified in section 1 or section 11, whichever applies, multiplied by the amount of such income. Section 1.904-4(c) provides detailed rules for determining whether income is high-taxed, including rules for testing income based on subgroups within passive income and allocating expenses, losses and other deductions to that income.

Questions have arisen regarding the coordination of these rules with the capital gains adjustments under section 904(b) and loss allocations and loss account recapture under section 904(f) and (g). The proposed regulations at §1.904-4(c) clarify that the determination as to whether income is high-taxed is made before taking into account any adjustments under section 904(b) or any allocation of losses or recapture of loss accounts under section 904(f) and (g). The Treasury Department and the IRS believe these ordering rules are consistent with the use in section 904(d)(2)(F) of the highest statutory U.S. tax rate, rather than the taxpayer's pre-credit effective U.S. tax rate, to determine whether income is high-taxed.

2. Dispositions of Property under Section 904(f)(3)

Section 904(f)(3) provides that if a taxpayer disposes of certain property used or held for use predominantly without the United States in a trade or business, gain is recognized on that disposition and treated as foreign source income, regardless of whether the gain would otherwise be recognized, to the extent of any overall foreign loss account in the separate category of foreign source taxable income generated by the property. Section 1.904(f)-2(d) provides separate rules for dispositions in which gain is recognized irrespective of section 904(f)(3) and dispositions in which the gain would not otherwise be recognized.

Questions have arisen regarding the coordination of overall foreign loss recapture under section 904(f)(3) with other provisions of section 904(f) and (g). Accordingly, these proposed regulations revise the ordering rules under §1.904(g)-3 that generally provide for the coordination of section 904(f) and (g) to include specific references for taking into account overall foreign loss recapture under section 904(f)(3).

In the case of dispositions in which gain is recognized irrespective of section 904(f)(3), the overall foreign loss recapture is included in Step Five along with other general overall foreign loss recapture.

Dispositions in which the gain would not otherwise be recognized are addressed separately. Section 1.904(f)-2(d)(4)(i) provides, in part, that where gain would

not otherwise be recognized on a disposition, the amount of gain that will be recognized under section 904(f)(3) is equal to the balance in the applicable foreign loss account after taking into account any amounts recaptured from the account from other recognized income for the year (as well as certain other adjustments). In other words, the additional amount of income to be recognized can only be determined after the first seven steps of the ordering rules in §1.904(g)-3 have been completed. Accordingly, a new Step Eight is added to those ordering rules to address the recognition of the additional income under section 904(f)(3) and the corresponding recapture of the applicable overall foreign loss account. New Step Eight also provides that if the additional recognition of gain increases the allowable amount of the net operating loss deduction, then the recapture of the overall foreign loss account occurs first before the additional net operating loss carryover is taken into account to offset all or a portion of that gain. The Treasury Department and the IRS believe priority should be given to the additional recapture of the overall foreign loss account pursuant to section 904(f)(3) before any net operating loss carryover reduces that gain. This is because the primary reason for recognizing the otherwise unrecognized gain is to recapture the overall foreign loss account.

Proposed Effective Date

The regulations, as proposed, will apply to any taxable year ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted

to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.904-4 is amended by adding paragraph (c)(2)(iii) and by adding a sentence at the end of paragraph (n) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(iii) *Coordination with section 904(b), (f) and (g).* The determination of whether foreign-source passive income is high-taxed is made before taking into

account any adjustments under section 904(b) or any allocation or recapture of a separate limitation loss, overall foreign loss or overall domestic loss under section 904(f) and (g).

(n) *** Paragraph (c)(2)(iii) of this section applies to taxable years ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 1.904(g)-3 is amended by revising paragraph (f), adding paragraph (i) and adding a sentence at the end of paragraph (k) to read as follows:

§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for the recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

(f) *Step Five: Recapture of overall foreign loss accounts.* If the taxpayer's separate limitation income for the taxable year (reduced by any losses carried over under paragraph (b) of this section) exceeds the sum of the taxpayer's U.S. source loss and separate limitation losses for the year, so that the taxpayer has separate limitation income remaining after the application of paragraphs (d)(1) and (e) of this section, then the taxpayer shall recapture prior year overall foreign losses, if any, in accordance with §1.904(f)-2, and reduce overall foreign loss accounts in accordance with §1.904(f)-2. Such recapture shall include amounts determined under §1.904(f)-2(c) and (d)(3) but not §1.904(f)-2(d)(4).

(i) *Step Eight: Dispositions under section 904(f)(3) in which gain would not otherwise be recognized.* The taxpayer shall determine the amount of gain that would otherwise not be recognized but that must be recognized in accordance with §1.904(f)-2(d)(4) (not exceeding the taxpayer's applicable overall foreign loss account) and then apply §1.904(f)-2(a) and (b) to recapture overall foreign loss accounts in an amount equal to the gain recognized. To the extent this recognition of gain in a taxable year increases the amount

of a net operating loss carryover to that taxable year, paragraphs (b) through (e) of this section shall be applied to determine the allocation of the additional net operating loss, but only after the applicable overall foreign loss account has been recaptured as provided in this paragraph (i).

(k) *** Paragraphs (f) and (i) of this section apply to taxable years ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 22, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 25, 2012, 77 F.R. 37837)

Notice of Proposed Rulemaking and Notice of Public Hearing

Amendment of Prohibited Payment Option Under Single-Employer Defined Benefit Plan of Plan Sponsor in Bankruptcy

REG-113738-12

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would provide guidance under the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code, which generally prohibit plan amendments eliminating or reducing accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans. These proposed regulations would provide an additional limited exception to the anti-cutback rules to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other

optional form of benefit providing for accelerated payments) under the plan if certain specified conditions are satisfied. These proposed regulations would affect administrators, employers, participants, and beneficiaries of such a plan. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 20, 2012. Outlines of topics to be discussed at the public hearing scheduled for Friday, August 24, 2012, at 10 a.m. must also be received by August 16, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-113738-12), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-113738-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-113738-12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Neil S. Sandhu or Linda S.F. Marshall at (202) 622-6090; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 411(d)(6) of the Internal Revenue Code (Code). These proposed regulations would amend §1.411(d)-4 of the Treasury regulations.

Section 401(a)(7) provides that a trust does not constitute a qualified trust unless

its related plan satisfies the requirements of section 411 (relating to minimum vesting standards). Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2) of the Code or section 4281 of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (ERISA).

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. For a retirement-type subsidy, this protection applies only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 436(d)(2) provides that a defined benefit plan which is a single-employer plan must provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law (a "bankruptcy case"), the plan may not pay any "prohibited payment." However, that limitation does not apply in a plan year on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage (as defined in section 436(j)(2)) of the plan for the plan year is not less than 100 percent.

Section 436(d)(5) sets forth a definition of the term "prohibited payment." Under this definition, a "prohibited payment" is : (1) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or ben-

eficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under section 436(d)(1) or section 436(d)(2) is in effect; (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and (3) any other payment specified by the Secretary by regulations. The term "prohibited payment" does not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

Section 1.411(d)-4, Q&A-1(a) provides that the term "section 411(d)(6) protected benefit" includes: (1) benefits described in section 411(d)(6)(A); (2) early retirement benefits (as defined in §1.411(d)-3(g)(6)(i)) and retirement type subsidies (as defined in §1.411(d)-3(g)(6)(iv)); and (3) optional forms of benefit described in section 411(d)(6)(B)(ii).

Section 1.411(d)-4, Q&A-1(b)(1) provides that the term "optional form of benefit" for purposes of §1.411(d)-4 has the same meaning as in §1.411(d)-3(g)(6)(ii). Section 1.411(d)-3(g)(6)(ii)(A) defines the term "optional form of benefit" as "a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. Different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial factors or assumptions used to determine the amount distributed. Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (for example, in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies."

Section 1.411(d)-4, Q&A-2(a)(1) provides that a plan is not permitted to be amended to eliminate or reduce a section 411(d)(6) protected benefit that

has already accrued, except as provided in §1.411(d)-3 or §1.411(d)-4. Under §1.411(d)-4, Q&A-2(b)(1), the Commissioner is authorized to provide for the elimination or reduction of an optional form of benefit to the extent that plan participants do not lose either a valuable right or an employer-subsidized optional form of benefit when a similar optional form of benefit with a comparable subsidy is not provided.¹ In addition, §1.411(d)-4, Q&A-2(b)(2)(i) through (xi) sets forth specific situations under which the elimination or reduction of certain section 411(d)(6) protected benefits that have already accrued does not violate section 411(d)(6). These exceptions have been included in regulations pursuant to the Service's authority under the last sentence of section 411(d)(6)(B) to permit a plan amendment that eliminates or reduces optional forms of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 1.436-1(d)(2) provides that a plan satisfies the requirements of section 436(d)(2) and §1.436-1(d)(2) only if the plan provides that a participant or beneficiary is not permitted to elect an optional form of benefit that includes a prohibited payment, and the plan will not pay any prohibited payment, with an annuity starting date that occurs during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made with an annuity starting date that occurs on or after the date within the plan year on which the enrolled actuary of the plan certifies that the plan's adjusted funding target attainment percentage for the plan year is not less than 100 percent.

Title IV of ERISA provides for a pension plan termination insurance program that is administered by the Pension Benefit Guaranty Corporation (PBGC). PBGC guarantees nonforfeitable benefits, up to specified limits, for defined benefit pension plans that are covered under the program.² If a single-employer plan terminates in a distress termination under section 4041(c) of ERISA or an involuntary termination under section 4042 of ERISA, and the plan assets are not suffi-

¹ Such an amendment can be authorized only through the publication of revenue rulings, notices, and other documents of general applicability. See §601.601(d)(2)(ii)(b).

² See section 4021 of ERISA.

cient to provide all guaranteed benefits, PBGC pays benefits to participants and beneficiaries under the provisions of Title IV and PBGC's regulations.³ PBGC allows a participant who is not in pay status at the time of the termination to elect among the various annuity forms described in 29 C.F.R. 4022.8. In addition, under 29 C.F.R. 4022.7, PBGC does not pay benefits in a single sum in excess of \$5,000 (except under certain limited circumstances).

Section 204(g) of ERISA contains rules that are parallel to Code section 411(d)(6). Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 204(g) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations issued under section 411(d)(6) of the Code would apply as well for purposes of section 204(g) of ERISA.

Explanation of Provisions

These proposed regulations would provide a limited exception under section 411(d)(6)(B) to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other optional form of benefit providing for accelerated payments) if certain conditions are satisfied.

In particular, the proposed regulations would permit a single-employer plan that is covered under section 4021 of ERISA to be amended, effective for a plan amendment that is both adopted and effective after August 31, 2012, to eliminate an optional form of benefit that includes a prohibited payment described in section 436(d)(5), provided that four conditions are satisfied on the later of the date the amendment is adopted or effective (the applicable amendment date, as defined in §1.411(d)-3(g)(4)). First, the enrolled actuary of the plan has certified that the plan's adjusted funding target attainment percentage (as defined in section 436(j)(2)) for the plan year that contains

the applicable amendment date is less than 100 percent. Second, the plan is not permitted to pay any prohibited payment, due to application of the requirements of section 436(d)(2) of the Code and section 206(g)(3)(B) of ERISA, because the plan sponsor is a debtor in a bankruptcy case (that is, a case under title 11, United States Code, or under similar Federal or State law). Third, the court overseeing the bankruptcy case has issued an order, after notice to each affected party (within the meaning of section 4001(a)(21) of ERISA) and a hearing,⁴ finding that the adoption of the amendment eliminating that optional form of benefit is necessary to avoid a distress termination of the plan pursuant to section 4041(c) of ERISA or an involuntary termination of the plan pursuant to section 4042 of ERISA before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed). Fourth, PBGC has issued a determination that the adoption of the amendment eliminating that optional form of benefit is necessary to avoid a distress or involuntary termination of the plan before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed) and that the plan is not sufficient for guaranteed benefits within the meaning of section 4041(d)(2) of ERISA.

These proposed regulations would exercise the Secretary's authority under the last sentence of section 411(d)(6)(B) in order to permit this type of amendment that eliminates an optional form of benefit in these limited circumstances. The legislative history of section 411(d)(6)(B), which was added by section 301(a) of the Retirement Equity Act of 1984, Public Law 98-397, states the intent that Treasury regulations could permit the elimination of an optional form of benefit if "(1) the elimination of the option does not eliminate a valuable right of a participant or beneficiary, and (2) the option is not subsidized or a similar benefit with a comparable subsidy is provided."⁵ The legislative history further states that the committee "expects that the regulations will not permit the elimination of a 'lump-sum distri-

bution option' because, for a participant or beneficiary with substandard mortality, the elimination of that option could eliminate a valuable right even if a benefit of equal actuarial value (based on standard mortality) is available under the plan."⁶

If the four conditions set forth in the regulations are satisfied, a single-sum distribution option or other optional form of benefit that includes a prohibited payment (generally a payment that is in excess of the monthly amounts payable under a single life annuity) would not currently be available and would not be available in the future. The plan would not currently be permitted to pay that optional form of benefit because section 436(d)(2) (which imposes restrictions on the payment of prohibited payments while the plan sponsor is in bankruptcy) bars the payment of such an optional form of benefit under these conditions. Furthermore, the bankruptcy court and the PBGC would each have issued a determination that the plan would be terminated in a distress or involuntary termination unless that optional form of benefit were eliminated. In addition, the PBGC would have determined that the plan is not sufficient for guaranteed benefits. In such a case, pursuant to §4022.7 and §4022.8 of the PBGC regulations, the optional form of benefit would not have been available after the plan termination. Accordingly, the elimination of the optional form of benefit would not result in the loss of a valuable right of a participant or beneficiary.

In addition, the plan amendment would not eliminate or reduce early retirement benefits or retirement-type subsidies, which would continue to be available under the plan. Because the plan would not be terminated in a distress or involuntary termination, participants would continue to be credited with additional service under the plan and could become eligible for early retirement benefits and retirement-type subsidies, regardless of whether participants received benefit accruals with respect to the additional service. Moreover, because the plan would not be terminated, the plan might have the opportunity to recover from its underfunded status.

³ See section 4022 of ERISA.

⁴ See 11 U.S.C. 102(1).

⁵ S. Rep. No. 98-575, at 30 (1984).

⁶ Id.

Under these proposed regulations, a judicial determination must be made, after notice to each affected party (including each plan participant, each employee organization representing plan participants, and the PBGC) and a hearing, that the amendment is necessary to avoid termination of the plan in a distress or involuntary termination before the plan sponsor emerges from bankruptcy. The primary purpose of this notice and hearing requirement is to afford plan participants who may be affected the opportunity to be heard on whether the amendment is necessary to avoid plan termination.

Effective/Applicability Dates

These regulations are proposed to apply to plan amendments that are adopted and effective after August 31, 2012.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules, including specifically whether the regulations should impose additional conditions on the prospective elimination of the single-sum distribution option (or other optional form of benefit that includes a prohibited payment), such as a condition that, after the amendment, the plan must

offer annuity distribution options that provide substantial survivor benefits, such as both (1) a life annuity with a term certain of 15 or more years and (2) a 100% joint and survivor annuity, in order to give participants who have substandard mortality the opportunity to protect their survivors.

All comments will be available at www.regulations.gov or upon request. A public hearing has been scheduled for Friday, August 24, 2012, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by August 20, 2012, and submit an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by August 16, 2012.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Neil S. Sandhu and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.411(d)-4 is amended by adding a new paragraph A-2(b)(2)(xii) to read as follows:

§1.411(d)-4 Section 411(d)(6) protected benefits.

* * * * *

Q&A-2: * * *

(b) * * *

(2) * * *

(xii) *Prohibited payment option under single-employer defined benefit plan of plan sponsor in bankruptcy.* A single-employer plan that is covered under section 4021 of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (ERISA), may be amended, effective for a plan amendment that is both adopted and effective after August 31, 2012, to eliminate an optional form of benefit that includes a prohibited payment described in section 436(d)(5), provided that the following conditions are satisfied on the applicable amendment date (as defined in §1.411(d)-3(g)(4)):

(A) The enrolled actuary of the plan has certified that the plan's adjusted funding target attainment percentage (as defined in section 436(j)(2)) for the plan year that contains the applicable amendment date is less than 100 percent;

(B) The plan is not permitted to pay any prohibited payment, due to application of the requirements of section 436(d)(2) of the Internal Revenue Code and section 206(g)(3)(B) of ERISA, because the plan sponsor is a debtor in a bankruptcy case (that is, a case under title 11, United States Code, or under similar Federal or State law);

(C) The court overseeing the bankruptcy case has issued an order, after notice to each affected party (within the meaning of section 4001(a)(21) of ERISA) and a hearing, finding that the adoption of the

amendment eliminating that optional form of benefit is necessary to avoid a distress termination of the plan pursuant to section 4041(c) of ERISA or an involuntary termination of the plan pursuant to section 4042 of ERISA before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed); and

(D) The Pension Benefit Guaranty Corporation has issued a determination that—

(I) The adoption of the amendment eliminating that optional form of benefit

is necessary to avoid a distress or involuntary termination of the plan before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed); and

(2) The plan is not sufficient for guaranteed benefits within the meaning of section 4041(d)(2) of ERISA.

* * * * *

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 20, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 21, 2012, 77 F.R. 37349)

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

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