Internal Revenue bulletin

Bulletin No. 2012-41
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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

Rev. Rul. 2012–27, page 435.

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the second half of 2012 are set forth.

Rev. Proc. 2012–39, page 470.

This procedure modifies the rules under section 446 of the Code in Rev. Proc. 2011–14, 2011–4 I.R.B. 330, and Rev. Proc. 97–27, 1997–1 C.B. 680, regarding certain changes in method of accounting by taxpayers that engage in a transaction to which section 381(a) applies that occurs on or after August 31, 2011. The procedure also modifies section 3.09 of the APPENDIX of Rev. Proc. 2011–14 regarding a change in method of accounting described in Rev. Proc. 2011–43 for taxpayers in the business of transporting, delivering, or selling electricity. Finally, the procedure clarifies and modifies section 8.04 of the APPENDIX of Rev. Proc. 2011–14 regarding a change in method of accounting for amounts paid or incurred for the installation of energy efficient commercial building property under section 179D. Rev. Proc. 97–27 modified. Rev. Proc. 2011–14 clarified and modified.

EXCISE TAX

Notice 2012–58, page 436.

This notice describes safe harbor methods that employers may use to determine which employees are treated as full-time employees for purposes of the shared employer responsibility provisions of section 4980H of the Code.

Notice 2012–59, page 443.

This notice provides temporary guidance regarding the 90-day waiting period limitation in Public Health Service Act (PHS Act) section 2708.

ADMINISTRATIVE

Notice 2012–60, page 445.

Per capita payments from proceeds of settlements of Indian tribal trust cases. This notice advises taxpayers that *per capita* payments to Indian tribal members made from the proceeds of the settlement of certain litigation between the United States and Indian tribes are excluded from gross income.

Rev. Proc. 2012–37, page 449.

This procedure contains updates to Publication 1239, *Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically*, revised (9–2012).

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

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 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.

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

Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the second half of 2012 are set forth.

Rev. Rul. 2012–27

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

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

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
7/1/12 - 12/31/12	$46.97	Up to 500 miles = $.2569 per mile 501-1500 miles = $.1959 per mile Over 1500 miles = $.1884 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt/Government Entities). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 622–0047 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (Section 4980H)

Notice 2012–58

I. PURPOSE AND OVERVIEW

This notice describes safe harbor methods that employers may use (but are not required to use) to determine which employees are treated as full-time employees for purposes of the shared employer responsibility provisions of § 4980H of the Internal Revenue Code (Code). Specifically, the administrative guidance in this notice, modifying and expanding on previous guidance, includes a safe harbor method that employers may apply to specified newly-hired employees.

As described more fully below, this notice —

- Expands the safe harbor method described in a previous notice to provide employers the option to use a look-back measurement period of up to 12 months to determine whether new variable hour employees or seasonal employees are full-time employees, without being subject to a payment under § 4980H for this period with respect to those employees. An employee is a variable hour employee if, based on the facts and circumstances at the date the employee begins providing services to the employer (the start date), it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week. (The 30 hours per week average reflects the statutory definition of full-time employee in § 4980H(c)(4) and is the definition of "full-time employee" as used in this notice.) Seasonal employee is defined in section III.D.5, below.
- Provides employers the option to use specified administrative periods (in conjunction with specified measurement periods) for ongoing employees (as defined in section III.A, below) and certain newly hired employees;
- Facilitates a transition for new employees from the determination method the employer chooses to use for them to the determination method the employer chooses to use for ongoing employees; and
- Provides employers reliance, at least through the end of 2014, on the guidance contained in this notice and on the following approaches described in prior notices:

    1. for ongoing employees, an employer will be permitted to use measurement and stability periods of up to 12 months;
    2. for new employees who are reasonably expected to work full-time, an employer that maintains a group health plan that meets certain requirements will not be subject to an assessable payment under § 4980H for failing to offer coverage to the employee for the initial three months of employment; and
    3. for all employees, an employer will not be subject to an assessable payment under § 4980H(b) for an employee if the coverage offered to that employee was affordable based on the employee's Form W–2 wages reported in Box 1 (often referred to as the affordability safe harbor).

This guidance is intended to encourage employers to continue providing and potentially to expand group health plan coverage for their employees by permitting employers to adopt reasonable procedures to determine which employees are full-time employees without becoming liable for a payment under § 4980H, to protect employees from unnecessary cost, confusion, and disruption of coverage, and to minimize administrative burdens on the Affordable Insurance Exchanges (Exchanges).

Simultaneously with the issuance of this notice, the Department of the Treasury, the Department of Labor (DOL), and the Department of Health and Human Services (HHS) (the Departments) are jointly providing administrative guidance under § 2708 of the Public Health Service Act (PHS Act).[1] PHS Act § 2708 applies to group health plans and group health insurance issuers and provides that any waiting period under a group health plan must not exceed 90 days. To clarify how the PHS Act § 2708 90-day waiting period limitation coordinates with § 4980H, this notice applies portions of the Departments' separate and simultaneous PHS Act § 2708 guidance. DOL and HHS concur in the application of PHS Act § 2708 in this notice.

This notice consists of a background section briefly summarizing the § 4980H and PHS Act § 2708 statutory framework and the administrative guidance issued to date (section II); a description of the safe harbors available for employers for determining full-time employee status in the case of ongoing employees and newly-hired variable hour and seasonal employees (including the transition from newly-hired to ongoing employees and a series of examples illustrating how the safe harbors apply) (section III); a description of the reliance provided to employers through at least 2014 (section IV); and a request for comments (section V).

II. BACKGROUND

A. *Section 4980H*

Section 4980H was added to the Code by § 1513 of the Patient Protection and Affordable Care Act (Affordable Care Act) (enacted March 23, 2010, Pub. L. No. 111–148) and amended by § 1003 of the Health Care and Education Reconciliation Act of 2010 (enacted March 30, 2010, Pub. L. No. 111–152).[2] Section 4980H applies to "applicable large employers" (generally, employers who employed at least 50 full-time employees, including full-time equivalent employees, on business days during the preceding calendar year).

Generally, § 4980H provides that an applicable large employer is subject to an

[1] Notice 2012–59, DOL Technical Release 2012–02 and HHS Bulletin titled Guidance on 90-Day Waiting Period Limitation under Public Health Service Act § 2708.

[2] Section 4980H was further amended by section 1858(b)(4) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112–10), effective for months beginning after December 31, 2013.

assessable payment if either (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage[3] under an eligible employer-sponsored plan and any full-time employee is certified to receive a premium tax credit or cost-sharing reduction (§ 4980H(a)), or (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage and one or more full-time employees is certified to receive a premium tax credit or cost-sharing reduction (generally because the employer's coverage either is not affordable within the meaning of § 36B(c)(2)(C)(i) or does not provide minimum value within the meaning of § 36B(c)(2)(C)(ii)) (§ 4980H(b)). Under § 36B(c)(2)(C)(i), coverage under an employer-sponsored plan is affordable to a particular employee if the employee's required contribution (within the meaning of § 5000A(e)(1)(B)) to the plan does not exceed 9.5 percent of the employee's household income for the taxable year. Section 4980H(c)(4) provides that a full-time employee with respect to any month is an employee who is employed on average at least 30 hours of service per week.[4]

B. *PHS Act Section 2708*

PHS Act § 2708[5] provides that, for plan years beginning on or after January 1, 2014, a group health plan or group health insurance issuer shall not apply any waiting period that exceeds 90 days. PHS Act § 2704(b)(4), ERISA § 701(b)(4), and Code § 9801(b)(4) define a waiting period to be the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the plan. In 2004 regulations,[6] the Departments defined a waiting period to mean the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.

C. *Notice 2011–36*

Public comments were requested and received on a number of issues and potential approaches to interpreting and applying § 4980H and PHS Act § 2708. In particular, Notice 2011–36, 2011–21 I.R.B. 792, described and requested comments on a possible approach that would permit employers to use an optional "look-back/stability period safe harbor" to determine whether ongoing (rather than newly-hired) employees are full-time employees for purposes of § 4980H. The use of this safe harbor approach would be voluntary.

Under the look-back/stability period safe harbor method, an employer would determine each employee's full-time status by looking back at a defined period of not less than three but not more than 12 consecutive calendar months, as chosen by the employer (the measurement period), to determine whether during the measurement period the employee averaged at least 30 hours of service per week. If the employee were determined to be a full-time employee during the measurement period, then the employee would be treated as a full-time employee during a subsequent "stability period," regardless of the employee's number of hours of service during the stability period, so long as he or she remained an employee. For an employee determined to be a full-time employee during the measurement period, the stability period would be a period of at least six consecutive calendar months that follows the measurement period and is no shorter in duration than the measurement period. If the employee were determined not to be a full-time employee during the measurement period, the employer would be permitted to treat the employee as not a full-time employee during a stability period that followed the measurement period, but the stability period could not exceed the measurement period. Comments on this approach were favorable.

D. *Notice 2011–73*

In Notice 2011–73, 2011–40 I.R.B. 474, Treasury and the IRS described a safe harbor under which employers would not be subject to an assessable payment under § 4980H(b) with respect to an employee if the coverage offered to that employee was affordable based on the employee's Form W–2 wages (as reported in Box 1) instead of household income. Under the safe harbor, an employer would not be subject to a penalty under § 4980H(b) with respect to an employee if the required contribution for that employee was no more than 9.5 percent of the employee's Form W–2 wages. The proposed affordability safe harbor would apply only for purposes of determining whether an employer is subject to the assessable payment under § 4980H(b). For example, the safe harbor would not affect an employee's eligibility for a premium tax credit under § 36B. Treasury and the IRS requested and received comments on the safe harbor, and the comments were generally favorable. Subsequently, Notice 2012–17, 2012–9 I.R.B. 430[7], stated that, as described in Notice 2011–73, Treasury and the IRS intend to issue proposed regulations or other guidance permitting employers to use an employee's Form W–2 wages (as reported in Box 1) as a safe harbor in determining the affordability of employer coverage.

E. *Notice 2012–17*

Notice 2012–17 also described and requested comments on a potential approach for determining the full-time status of new employees for purposes of § 4980H if, based on the facts and circumstances at the start date, it cannot reasonably be determined whether the new employee is expected to work full-time because the employee's hours are variable or otherwise uncertain. Under the potential approach described in Notice 2012–17, employers would be given three months or, in certain cases, six months, without incurring a pay-

[3] Minimum essential coverage is defined in § 5000A(f) of the Code. The definition of "eligible employer-sponsored plan" in § 5000A(f)(2) applies for purposes of § 4980H.

[4] For this purpose, proposed regulations are expected to provide (as stated in Notice 2011–36) that 130 hours of service in a calendar month would be treated as the monthly equivalent of 30 hours of service per week.

[5] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728. Accordingly, PHS Act § 2708 is subject to shared interpretive jurisdiction by DOL, HHS, and Treasury.

[6] 26 CFR 54.9801–3(a)(3)(iii), 29 CFR 2590.701–3(a)(3)(iii), 45 CFR 146.111(a)(3)(iii).

[7] Simultaneously with the issuance of Notice 2012–17, DOL and HHS issued parallel guidance. See DOL Technical Release 2012–01 and HHS FAQs issued February 9, 2012.

ment under § 4980H, to determine whether a variable hour new employee is a full-time employee.

In response to Notice 2012–17, commenters requested that employers be allowed to use a look-back measurement period of up to 12 months to determine the status of new variable hour employees, similar to the method permitted to determine the status of ongoing employees.

F. *Revised Approach in This Notice*

After considering the comments, Treasury and the IRS are revising the approach outlined in Notice 2012–17 for new variable hour employees. Treasury and the IRS anticipate that the revised approach, which is generally similar to the approach for ongoing employees, will be a flexible and workable option for determining the full-time status of new variable hour employees, and will provide employees and employers with greater stability and predictability. Treasury and the IRS also are providing a similar safe harbor for certain seasonal employees and are modifying the rule for ongoing employees to provide greater flexibility by allowing use of an administrative period, described below, between the measurement and stability periods. This revised guidance is described in section III, below.

Note that unless specified otherwise, all references in this notice to an offer of coverage to an employee refer to an offer of minimum essential coverage that is affordable within the meaning of § 36B(c)(2)(C)(i) (or is treated as affordable coverage under the Form W–2 safe harbor described in section II.D of this notice) and that provides minimum value within the meaning of § 36B(c)(2)(C)(ii). Also, whenever this notice states that coverage must be offered to an employee by a specified date, it means that the offer that must be made to the employee, if accepted by the employee, would result in the employee actually receiving coverage that is effective as of the specified date. Absent such an offer, the employer may be subject to an assessable payment under § 4980H. In addition, unless otherwise specified below, solely for the purpose of the guidance in this notice, the term "calendar month" means one of the full months named in the calendar (such as January, February or March), and the term "month" means the period from a day in one month to the prior day of the following month (such as from January 15 to February 14).

III. DETERMINING FULL-TIME STATUS OF EMPLOYEES

A. *Ongoing Employees: Safe Harbor*

For ongoing employees, employers generally will be permitted to use the safe harbor method based upon measurement and stability periods described in Notices 2011–36 and 2012–17. The measurement period the employer chooses to apply to ongoing employees is referred to in this notice as the "standard measurement period."

An "ongoing employee" is generally an employee who has been employed by the employer for at least one complete standard measurement period. As stated in Notice 2011–36, different rules may apply to employees who move into full-time status during the year. Additional rules regarding the treatment of employees who experience a change in employment status are expected to be included in upcoming regulations.

Under the safe harbor method for ongoing employees, an employer determines each ongoing employee's full-time status by looking back at the standard measurement period (a defined time period of not less than three but not more than 12 consecutive months, as chosen by the employer). The employer has the flexibility to determine the months in which the standard measurement period starts and ends, provided that the determination must be made on a uniform and consistent basis for all employees in the same category. (See below in this section for permissible categories.) For example, if an employer chose a standard measurement period of 12 months, the employer could choose to make it the calendar year, a non-calendar plan year, or a different 12-month period, such as one that ends shortly before the start of the plan's annual open enrollment season. If the employer determines that an employee averaged at least 30 hours per week during the standard measurement period, then the employer treats the employee as a full-time employee during a subsequent "stability period", regardless of the employee's number of hours of service during the stability period, so long as he or she remained an employee.

For an employee whom the employer determines to be a full-time employee during the standard measurement period, the stability period would be a period of at least six consecutive calendar months that is no shorter in duration than the standard measurement period and that begins after the standard measurement period (and any applicable administrative period, as discussed in section III.B, below). If the employer determines that the employee did not work full-time during the standard measurement period, the employer would be permitted to treat the employee as not a full-time employee during the stability period that follows, but is not longer than, the standard measurement period.

Subject to the rules governing the relationship between the length of the measurement period and the stability period, employers may use measurement periods and stability periods that differ either in length or in their starting and ending dates for the following categories of employees: (1) collectively bargained employees and non-collectively bargained employees; (2) salaried employees and hourly employees; (3) employees of different entities; and (4) employees located in different States. (These categories are adapted from existing regulatory guidance and also reflect public comments received in response to Notice 2011–36.) The rules described in this paragraph apply both to the standard measurement periods described in this section III.A and the initial measurement periods described below in section III.D.

B. *Ongoing Employees: Option to Use Administrative Period Under Safe Harbor*

Because employers may need time between the standard measurement period and the associated stability period to determine which ongoing employees are eligible for coverage, and to notify and enroll employees, an employer may make time for these administrative steps by having its standard measurement period end before the associated stability period begins. However, any administrative period between the standard measurement period and the stability period may neither reduce nor lengthen the measurement period or the stability period. The administrative period following the standard measurement period may last up to 90 days. To prevent this administrative period from creating any potential gaps in coverage, it will overlap with the prior stability period, so that, during any such administrative period applicable to ongoing employees following a standard measurement period, ongoing employees who are eligible for coverage because of their status as full-time employees based on a prior measurement period would continue to be offered coverage.

Example

Facts. Employer W chooses to use a 12-month stability period that begins January 1 and a 12-month standard measurement period that begins October 15. Consistent with the terms of Employer W's group health plan, only an ongoing employee who works full-time (an average of at least 30 hours per week) during the standard measurement period is offered coverage during the stability period associated with that measurement period. Employer W chooses to use an administrative period between the end of the standard measurement period (October 14) and the beginning of the stability period (January 1) to determine which employees worked full-time during the measurement period, notify them of their eligibility for the plan for the calendar year beginning on January 1 and of the coverage available under the plan, answer questions and collect materials from employees, and enroll those employees who elect coverage in the plan. Previously-determined full-time employees already enrolled in coverage continue to be offered coverage through the administrative period.

Employee A and Employee B have been employed by Employer W for several years, continuously from their start date. Employee A worked full-time during the standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2 and for all prior standard measurement periods. Employee B also worked full-time for all prior standard measurement periods, but is not a full-time employee during the standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2.

Conclusions. Because Employee A was employed for the entire standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2, Employee A is an ongoing employee with respect to the stability period running from January 1 through December 31 of Year 3. Because Employee A worked full-time during that standard measurement period, Employee A must be offered coverage for the entire Year 3 stability period (including the administrative period from October 15 through December 31 of Year 3). Because Employee A worked full-time during the prior standard measurement period, Employee A would have been offered coverage for the entire Year 2 stability period, and if enrolled would continue such coverage during the administrative period from October 15 through December 31 of Year 2.

Because Employee B was employed for the entire standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2, Employee B is also an ongoing employee with respect to the stability period in Year 3. Because Employee B did not work full-time during this standard measurement period, Employee B is not required to be offered coverage for the stability period in Year 3 (including the administrative period from October 15 through December 31 of Year 3). However, because Employee B worked full-time during the prior standard measurement period, Employee B would be offered coverage through the end of the Year 2 stability period, and if enrolled would continue such coverage during the administrative period from October 15 through December 31 of Year 2.

Employer W complies with the standards of this section because the measurement and stability periods are no longer than 12 months, the stability period for ongoing employees who work full-time during the standard measurement period is not shorter than the standard measurement period, the stability period for ongoing employees who do not work full-time during the standard measurement period is no longer than the standard measurement period, and the administrative period is no longer than 90 days.

C. *New Employees: Reasonably Expected to Work Full-Time*

If an employee is reasonably expected at his or her start date to work full-time, an employer that sponsors a group health plan that offers coverage to the employee at or before the conclusion of the employee's initial three calendar months of employment will not be subject to the employer responsibility payment under § 4980H by reason of its failure to offer coverage to the employee for up to the initial three calendar months of employment. For rules on compliance with the 90-day waiting period limitation under PHS Act § 2708, see the guidance cited at footnote 1.

D. *New Employees: Safe Harbor for Variable Hour and Seasonal Employees*

If an employer maintains a group health plan that would offer coverage to the employee only if the employee were determined to be a full-time employee, the employer may use both a measurement period of between three and 12 months (the same as allowed for ongoing employees) and an administrative period of up to 90 days for variable hour and seasonal employees. However, the measurement period and the administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month). These periods are described in greater detail below.

1. *Initial Measurement Period and Associated Stability Period*

For variable hour and seasonal employees, employers are permitted to determine whether the new employee is a full-time employee using an "initial measurement period" of between three and 12 months (as selected by the employer). The employer measures the hours of service completed by the new employee during the initial measurement period and determines whether the employee completed an average of 30 hours of service per week or more during this period. The stability period for such employees must be the same length as the stability period for ongoing employees. As in the case of a standard measurement period, if an employee is determined to be a full-time employee during the initial measurement period, the stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period and that begins after the initial measurement period (and any associated administrative period).

If a new variable hour or seasonal employee is determined not to be a full-time employee during the initial measurement period, the employer is permitted to treat the employee as not a full-time employee during the stability period that follows the initial measurement period. This stability period for such employees must not be more than one month longer than the initial measurement period and, as explained below, must not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends.[8]

An employee or related individual is not considered eligible for minimum es-

[8] In these circumstances, allowing a stability period to exceed the initial measurement period by one month is intended to give additional flexibility to employers that wish to use a 12-month stability period for new variable hour and seasonal employees and an administrative period that exceeds one month. To that end, such an employer could use an 11-month initial measurement period (in lieu of the 12-month initial measurement period that would otherwise be required) and still comply with the general rule that the initial measurement period and administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date.

sential coverage under the plan (and therefore may be eligible for a premium tax credit or cost-sharing reduction through an Exchange) during any period when coverage is not offered, including any measurement period or administrative period prior to when coverage takes effect.

2. *Transition from New Employee Rules to Ongoing Employee Rules*

Once a new employee, who has been employed for an initial measurement period, has been employed for an entire standard measurement period, the employee must be tested for full-time status, beginning with that standard measurement period, at the same time and under the same conditions as other ongoing employees. Accordingly, for example, an employer with a calendar year standard measurement period that also uses a one-year initial measurement period beginning on the employee's start date would test a new variable hour employee whose start date is February 12 for full-time status first based on the initial measurement period (February 12 through February 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.

An employee determined to be a full-time employee during an initial measurement period or standard measurement period must be treated as a full-time employee for the entire associated stability period. This is the case even if the employee is determined to be a full-time employee during the initial measurement period but determined not to be a full-time employee during the overlapping or immediately following standard measurement period. In that case, the employer may treat the employee as not a full-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the employee's full-time status would be determined in the same manner as that of the employer's other ongoing employees.

In contrast, if the employee is determined not to be a full-time employee during the initial measurement period, but is determined to be a full-time employee during the overlapping or immediately following standard measurement period, the employee must be treated as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the employee's full-time status would be determined in the same manner as that of the employer's other ongoing employees.

3. *Optional Administrative Period for New Employees*

In addition to the initial measurement period, the employer is permitted to apply an administrative period before the start of the stability period. This administrative period must not exceed 90 days in total. For this purpose, the administrative period includes all periods between the start date of a new variable hour or seasonal employee and the date the employee is first offered coverage under the employer's group health plan, other than the initial measurement period. Thus, for example, if the employer begins the initial measurement period on the first day of the first month following a new variable hour or seasonal employee's start date, the period between the employee's start date and the first day of the next month must be taken into account in applying the 90-day limit on the administrative period. Similarly, if there is a period between the end of the initial measurement period and the date the employee is first offered coverage under the plan, that period must be taken into account in applying the 90-day limit on the administrative period.

In addition to the specific limits on the initial measurement period (which must not exceed 12 months) and the administrative period (which must not exceed 90 days), there is a limit on the combined length of the initial measurement period and the administrative period applicable for a new variable hour or seasonal employee. Specifically, the initial measurement period and administrative period together cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. For example, if an employer uses a 12-month initial measurement period for a new variable hour employee, and begins that initial measurement period on the first day of the first calendar month following the employee's start date, the period between the end of the initial measurement period and the offer of coverage to a new variable hour employee who works full time during the initial measurement period must not exceed one month.

4. *Variable Hour Employee Defined*

For purposes of this notice, a new employee is a variable hour employee if, based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week. A new employee who is expected to work initially at least 30 hours per week may be a variable hour employee if, based on the facts and circumstances at the start date, the period of employment at more than 30 hours per week is reasonably expected to be of limited duration and it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week over the initial measurement period. As one example, a variable hour employee would include a retail worker hired at more than 30 hours per week for the holiday season who is reasonably expected to continue working after the holiday season but is not reasonably expected to work at least 30 hours per week for the portion of the initial measurement period remaining after the holiday season, so that it cannot be determined at the start date that the employee is reasonably expected to average at least 30 hours per week during the initial measurement period.

5. *Seasonal Employee Defined*

The Affordable Care Act addresses the meaning of seasonal worker in the context of whether an employer meets the definition of an applicable large employer. Specifically, § 4980H(c)(2)(B) generally provides that if an employer's workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal employees, the employer would not be an applicable large employer. Furthermore, § 4980H(c)(2)(B)(ii) provides that, for this purpose, seasonal worker means a worker who performs labor or services on a seasonal basis, as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons. The statute does not address how the term "seasonal employee" might be defined for purposes other than the determination of applicable large employer status, such as the determination of whether a new employee of an applicable large employer is reasonably expected to work full time for purposes of determining the amount of any assessable payment under § 4980H. Through at least 2014, employers are permitted to use a reasonable, good faith interpretation of the term "seasonal employee" for purposes of this notice.

E. *Examples*

The examples that follow illustrate how the safe harbors described above apply to variable hour employees and seasonal employees. For the rules that apply to full-time new employees, see section III.C, above. For rules that apply to part-time new employees, see section IV, example 4, of Notice 2012–59 (issued concurrently with this notice) interpreting PHS Act § 2708.

In all of the following examples**,** the coverage offer is an offer of minimum essential coverage that is affordable within the meaning of § 36B(c)(2)(C)(i) (or is treated as affordable coverage under the Form W–2 safe harbor described in section II.D of this notice) and that provides minimum value within the meaning of § 36B(c)(2)(C)(ii).

1. *Examples of New Variable Hour Employees with an Administrative Period.*

In Examples 1 through 8, the new employee is a new variable hour employee, and the employer has chosen to use a 12-month standard measurement period for ongoing employees starting October 15 and a 12-month stability period associated with that standard measurement period starting January 1. (Thus, during the administrative period from October 15 through December 31 of each calendar year, the employer continues to offer coverage to employees who qualified for coverage for that entire calendar year based upon working on average at least 30 hours per week during the prior standard measurement period.) Also, the employer offers health plan coverage only to full-time employees (and their dependents).

Example 1 (12-Month Initial Measurement Period Followed by 1+ Partial Month Administrative Period). (i) *Facts*. For new variable hour employees, Employer B uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2014. Employee Y's initial measurement period runs from May 10, 2014, through May 9, 2015. Employee Y works an average of 30 hours per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from July 1, 2015 through June 30, 2016.

(ii) *Conclusion*. Employee Y works an average of 30 hours per week during his initial measurement period and Employer B uses (1) an initial measurement period that does not exceed 12 months; (2) an administrative period totaling not more than 90 days; and (3) a combined initial measurement period and administrative period that does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee Y's start date. Accordingly, from Employee Y's start date through June 30, 2016, Employer B is not subject to any payment under § 4980H with respect to Employee Y, because Employer B complies with the standards for the initial measurement period and stability periods for a new variable hour employee. Employer B also complies with PHS Act § 2708. Employer B must test Employee Y again based on the period from October 15, 2014 through October 14, 2015 (Employer B's first standard measurement period that begins after Employee Y's start date).

Example 2 (11-Month Initial Measurement Period Followed by 2 + Partial Month Administrative Period). (i) *Facts*. Same as *Example 1*, except that Employer B uses an 11-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period until the end of the second calendar month beginning after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2014. Employee Y's initial measurement period runs from May 10, 2014, through April 9, 2015. Employee Y works an average of 30 hours per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from July 1, 2015 through June 30, 2016.

(ii) *Conclusion*. Same as *Example 1*.

Example 3 (11-Month Initial Measurement Period Preceded by Partial Month Administrative Period and Followed by 2-Month Administrative Period). (i) *Facts*. Same as *Example 1*, except that Employer B uses an 11-month initial measurement period that begins on the first day of the first calendar month beginning after the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2014. Employee Y's initial measurement period runs from June 1, 2014, through April 30, 2015. Employee Y works an average of 30 hours per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from July 1, 2015 through June 30, 2016.

(ii) *Conclusion*. Same as *Example 1*.

Example 4 (12-Month Initial Measurement Period Preceded by Partial Month Administrative Period and Followed by 2-Month Administrative Period). (i) *Facts*. For new variable hour employees, Employer B uses a 12-month initial measurement period that begins on the first day of the first month following the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employer B hires Employee Y on May 10, 2014. Employee Y's initial measurement period runs from June 1, 2014, through May 31, 2015. Employee Y works an average of 30 hours per week during this initial measurement period. Employer B offers coverage to Employee Y for a stability period that runs from August 1, 2015 through July 31, 2016.

(ii) *Conclusion*. Employer B does not satisfy the standards for the safe harbor method in section III.D because the combination of the initial partial month delay, the twelve-month initial measurement period, and the two month administrative period means that the coverage offered to Employee Y does not become effective until after the first day of the second calendar month following the first anniversary of Employee Y's start date. Accordingly, Employer B is potentially subject to a payment under § 4980H and fails to comply with PHS Act § 2708.

Example 5 (Continuous Full-Time Employee). (i) *Facts*. Same as *Example 1*; in addition, Employer B tests Employee Y again based on Employee Y's hours from October 15, 2014 through October 14, 2015 (Employer B's first standard measurement period that begins after Employee Y's start date), determines that Employee Y worked an average of 30 hours a week during that period, and offers Employee Y coverage for July 1, 2016 through December 31, 2016. (Employee Y already has an offer of coverage for the period of January 1, 2016 through June 30, 2016 because that period is covered by the initial stability period following the initial measurement period, during which Employee Y was determined to be a full-time employee.)

(ii) *Conclusion*. Employer B is not subject to any payment under § 4980H and complies with PHS Act § 2708 for 2016 with respect to Employee Y.

Example 6 (Initially Full-Time Employee, Becomes Non-Full-Time Employee). (i) *Facts*. Same as *Example 1*; in addition, Employer B tests Employee Y again based on Employee Y's hours from October 15, 2014 through October 14, 2015 (Employer B's first standard measurement period that begins after Employee Y's start date), and determines that Employee Y worked an average of 28 hours a week during that period. Employer B continues to offer coverage to Employee Y through June 30, 2016 (the end of the stability period based on the initial measurement period during which Employee Y was determined to be a full-time employee), but does not offer coverage to Employee Y for the period of July 1, 2016 through December 31, 2016.

(ii) *Conclusion*. Employer B is not subject to any payment under § 4980H and complies with PHS Act § 2708 for 2016 with respect to Employee Y, provided that it offers coverage to Employee Y from July 1, 2015 through June 30, 2016 (the entire stability period associated with the initial measurement period).

Example 7 (Initially Non-Full-Time Employee). (i) *Facts*. Same as *Example 1*, except that Employee Y works an average of 28 hours per week during the period from May 10, 2014 through May 9, 2015 and Employer B does not offer coverage to Employee Y in 2015. Employer B tests Employee Y again based on Employee Y's hours from October 15, 2014 through October 14, 2015 (Employer B's first standard measurement period that begins after Employee Y's start date).

(ii) *Conclusion*. From Employee Y's start date through the end of 2015, Employer B is not subject to any payment under § 4980H, because Employer B complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee Y. PHS Act § 2708 does not apply to Employee Y during this period because, pursuant to the plan's eligibility conditions, Employee Y does not become eligible during this period for coverage under the plan. Accordingly, Employer B also complies with PHS Act § 2708 with respect to Employee Y during this period.

Example 8 (Initially Non-Full-Time Employee, Becomes Full-Time Employee). (i) *Facts*. Same as *Example 7*; in addition, Employer B tests Employee Y again based on Employee Y's hours from October 15, 2014 through October 14, 2015 (Employer B's first standard measurement period that begins after Employee Y's start date), determines that Employee Y works an average of 30 hours per week during this standard measurement period, and offers coverage to Employee Y for 2016.

(ii) *Conclusion*. Employer B is not subject to any payment under § 4980H and complies with PHS Act § 2708 for 2016 with respect to Employee Y.

2. *Examples of New Variable Hour Employees with an Administrative Period and Six-Month Standard Measurement Period and Stability Period*.

In Examples 9 and 10, the new employee is a new variable hour employee, and the employer uses a six-month standard measurement period, starting each May 15 and November 15, with six-month stability periods associated with those standard measurement periods starting January 1 and July 1.

Example 9. (i) *Facts*. For new variable hour employees, Employer C uses a six-month initial measurement period that begins on the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the first full calendar month beginning after the end of the initial measurement period. Employer C hires Employee Z on May 10, 2014. Employee Z's initial measurement period runs from May 10, 2014, through November 9, 2014, during which Employee Z works an average of 30 hours per week. Employer C offers coverage to Employee Z for a stability period that runs from January 1, 2015 through June 30, 2015.

(ii) *Conclusion*. Employer C uses (1) an initial measurement period that does not exceed 12 months; (2) an administrative period totaling not more than 90 days; and (3) a combined initial measurement period and administrative period that does not last longer than the final day of the first calendar month beginning on or after the one-year anniversary of Employee Z's start date. From Employee Z's start date through June 30, 2015, Employer C is not subject to any payment under § 4980H, because Employer C complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee Z. Employer C also complies with PHS Act § 2708. Employer C must test Employee Z again based on Employee Z's hours during the period from November 15, 2014 through May 14, 2015 (Employer C's first standard measurement period that begins after Employee Z's start date).

Example 10 (Initially Full-Time Employee, Becomes Non-Full-Time Employee). (i) *Facts*. Same as *Example 9*; in addition, Employer C tests Employee Z again based on Employee Z's hours during the period from November 15, 2014 through May 14, 2015 (Employer C's first standard measurement period that begins after Employee Z's start date), during which period Employee Z works an average of 28 hours per week. Employer C continues to offer coverage to Employee Z through June 30, 2015 (the end of the initial stability period based on the initial measurement period during which Employer C worked an average of 30 hours per week), but does not offer coverage to Employee Z from July 1, 2015 through December 31, 2015.

(ii) *Conclusion*. Employer C is not subject to any payment under § 4980H and complies with PHS Act § 2708 with respect to Employee Z for 2015.

3. *Example of Seasonal Employee*

Example 11 (12-Month Initial Measurement Period; 1+ Partial Month Administrative Period). (i) *Facts*. Employer D offers health plan coverage only to full-time employees (and their dependents). Employer D uses a 12-month initial measurement period for new variable hour employees and seasonal employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period. Employer D hires Employee S, a ski instructor, on November 15, 2014 with an anticipated season during which Employee S will work running through March 15, 2015. Employer D determines that Employee S is a seasonal employee based upon a reasonable good faith interpretation of that term. Employee S's initial measurement period runs from November 15, 2014, through November 14, 2015. Employee S works 60 hours per week from November 15, 2014 through March 15, 2015, but is not reasonably expected to average 30 hours per week for the 12-month initial measurement period. Accordingly, Employer D does not treat Employee S as a full-time employee, and does not offer Employee S coverage.

(ii) *Conclusion*. Employer D uses (1) an initial measurement period that does not exceed 12 months; (2) an administrative period totaling not more than 90 days; and (3) a combined initial measurement period and administrative period that does not extend beyond the final day of the first calendar month that begins on or after the one-year anniversary of an employee's start date. Accordingly, from Employee S's start date through November 14, 2015, Employer D is not subject to any payment under § 4980H, because Employer D complies with the standards for the initial measurement period and stability periods for a new seasonal employee with respect to Employee S. PHS Act § 2708 does not apply to Employee S during this period because, pursuant to the plan's eligibility conditions, Employee S does not become eligible during this period for coverage under the plan. Accordingly, Employer D also complies with PHS Act § 2708 with respect to Employee S during this period.

IV. RELIANCE

For compliance with § 4980H at least through the end of 2014, employers may rely on (1) the safe harbor method for ongoing employees described in section III.A and B, above; (2) the rule for new employees reasonably expected to work full-time described in section III.C, above, (3) the safe harbor method for new variable hour and seasonal employees described in section III.D, above, and (4) the safe harbor based on Form W–2 wages described in Notice 2011–73 and Notice 2012–17. Employers will not be required to comply with any subsequent guidance on these issues that is more restrictive until at least January 1, 2015.

This reliance covers a measurement period that begins in 2013 or 2014 and the associated stability period (which may extend into 2014, 2015 or 2016). For example, the use of a 12-month measurement period in accordance with this notice beginning on July 1, 2013 and ending on June 30, 2014 might be used to classify employees for a stability period that runs from July 1, 2014 through June 30, 2015. In addition, as stated earlier, use of any of the safe harbor methods described in this notice is not required, but rather is optional for all employers.

V. PUBLIC COMMENTS

Treasury and the IRS intend that upcoming regulations on the employer shared responsibility provisions under § 4980H will address the issues described in this notice, including the specific issues identified below, in addition to other aspects of § 4980H.

As part of the efforts to develop workable and flexible rules on the application of § 4980H, with extensive input from stakeholders, Treasury and the IRS have issued several notices describing potential approaches to interpreting § 4980H and requesting public comments. In response, numerous helpful comments have been received and reviewed. Those comments continue to be considered and taken into account in the process of formulating regulations and other administrative guidance that stakeholders will be able to rely on. Among the specific issues currently under consideration with respect to the identification of full-time employees under § 4980H are the following:

1. Whether and, if so, what types of safe harbor methods should be available to employers for use in determining the full-time status of short-term assignment employees, temporary staffing employees, employees hired into high-turnover positions, and other categories of employees that may present special issues?
2. Whether to develop additional guidance (such as relevant factors or safe harbors) to assist employers and employees in determining, as of an employee's start date, whether the employee is reasonably expected to work an average of at least 30 hours per week, including whether the employee is a variable hour employee. If so, what types of factors or safe harbors should apply for this purpose?
3. What rules should be provided to address coordination of differing measurement and stability periods during the transition following a merger or acquisition?
4. How the term "seasonal worker" should be defined under § 4980H, including: (a) the practicability of using different definitions for different purposes (such as status as an applicable large employer or, with respect to an applicable large employer, status of a new employee as full-time); and (b) whether other, existing legal definitions should be considered in defining a seasonal worker under § 4980H (such as the safe harbor for seasonal employees in the final sentence of Treas. Reg. § 1.105–11(c)(2)(iii)(C)).

In view of the anticipated timing of regulations and other guidance that stakeholders will be able to rely on, it is requested that those who wish to submit any further comments on these or other issues relating to this notice do so by September 30, 2012. Comments should include a reference to Notice 2012–58. Send submissions to CC:PA:LPD:PR (Notice 2012–58), Room 5203, Internal Revenue Service, P.O. 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 (Notice 2012–58), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: *Notice.comments@irscounsel.treas.gov*. Please include "Notice 2012–58" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

VI. NO INFERENCE

No inference should be drawn from any provision of this notice concerning any other provision of § 4980H or any other provision of the Affordable Care Act.

VII. DRAFTING INFORMATION

The principal author of this notice is Mireille Khoury of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Khoury at (202) 622–6080 (not a toll-free call).

Guidance on 90-day Waiting Period Limitation Under Public Health Service Act Section 2708

Notice 2012–59

I. *INTRODUCTION*

The Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) are working together to develop coordinated regulations and other administrative guidance to assist stakeholders with implementation of the Patient Protection and Affordable Care Act (Affordable Care Act). This notice, which is being issued in substantially identical form by the other two Departments, provides temporary guidance regarding the 90-day waiting period limitation in Public Health Service Act (PHS Act) section 2708.[1] The guidance will remain in effect at least through the end of 2014. In addition, the Treasury Department, including the Internal Revenue Service (IRS), is concurrently issuing a notice providing administrative guidance on the shared responsibility of employers under section 4980H of the Internal Revenue Code (Code). See IRS Notice 2012–58. That guidance has been coordinated with the Departments of Labor and HHS and with the guidance contained in this notice.

II. *BACKGROUND*

PHS Act section 2708 provides that, for plan years beginning on or after January 1, 2014, a group health plan or health insurance issuer offering group health insurance coverage shall not apply any waiting period that exceeds 90 days.[2] PHS Act section 2704(b)(4), ERISA section 701(b)(4), and Code section 9801(b)(4) define a waiting period to be the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the plan. In 2004 regulations, the Departments defined a waiting period to mean the period that must pass before coverage

[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728. Accordingly, PHS Act section 2708 is subject to shared interpretive jurisdiction by the Departments.

[2] PHS Act section 2708 applies to both grandfathered and non-grandfathered plans. *See* section 1251(a)(4)(A)(i) of the Affordable Care Act.

for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.[3]

PHS Act section 2708 does not require the employer to offer coverage to any particular employee or class of employees, including part-time employees. PHS Act section 2708 merely prevents an otherwise eligible employee (or dependent) from having to wait more than 90 days before coverage becomes effective.

The Departments invited comments on the 90-day waiting period limitation, in addition to requesting comments on the employer shared responsibility provisions of Code section 4980H, in IRS Notice 2011–36.[4] Subsequent guidance outlined various approaches under consideration with respect to both the 90-day waiting period limitation and the employer shared responsibility provisions.[5] Specifically, the guidance outlined an approach under which employers would be permitted, under certain circumstances, to use an eligibility condition requiring an employee to complete a specified number of cumulative hours of service in order to be eligible for the coverage under the plan. Comments were invited on this and other aspects of the guidance, including how rules relating to the potential look-back/stability period safe harbor method for determining the full-time status of employees under Code section 4980H should be coordinated with the 90-day waiting period limitation of PHS Act section 2708.

III. *GUIDANCE*

This section provides temporary guidance on what the Departments will consider as compliance with PHS Act section 2708, and this guidance will remain in effect at least through the end of 2014. Regulations or other guidance on these issues applicable for periods after 2014 will provide adequate time to comply with any additional or modified requirements.

A. WAITING PERIOD DEFINED

A group health plan and a health insurance issuer offering group coverage may not use a waiting period that exceeds 90 days. A waiting period is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of the plan can become effective. For this purpose, being eligible for coverage means having met the plan's substantive eligibility conditions (such as being in an eligible job classification or achieving job-related licensure requirements specified in the plan's terms).

Consistent with PHS Act section 2708, eligibility conditions that are based solely on the lapse of a time period are permissible for no more than 90 days. Other conditions for eligibility under the terms of a group health plan are generally permissible under PHS Act section 2708, unless the condition is designed to avoid compliance with the 90-day waiting period limitation. Furthermore, if, under the terms of a plan, an employee may elect coverage that would begin on a date that does not exceed the 90-day waiting period limitation, the 90-day waiting period limitation is considered satisfied. Accordingly, a plan or issuer will not be considered to have violated PHS Act section 2708 merely because employees take additional time to elect coverage.

B. APPLICATION TO VARIABLE HOUR EMPLOYEES WHERE A SPECIFIED NUMBER OF HOURS OF SERVICE PER PERIOD IS A PLAN ELIGIBILITY CONDITION

If a group health plan conditions eligibility on an employee regularly working a specified number of hours per period (or working full time), and it cannot be determined that a newly-hired employee is reasonably expected to regularly work that number of hours per period (or work full time), the plan may take a reasonable period of time to determine whether the employee meets the plan's eligibility condition, which may include a measurement period that is consistent with the timeframe permitted for such determinations under Code section 4980H.[6] An employer may use a measurement period that is consistent with section 4980H, whether or not it is an applicable large employer subject to section 4980H. Except where a waiting period that exceeds 90 days is imposed after a measurement period, the time period for determining whether such an employee meets the plan's eligibility condition will not be considered to be designed to avoid compliance with the 90-day waiting period limitation if coverage is made effective no later than 13 months from the employee's start date, plus if the employee's start date is not the first day of a calendar month, the time remaining until the first day of the next calendar month.

IV. *EXAMPLES*

Examples set forth below illustrate how the "designed to avoid compliance with the 90-day waiting period limitation" standard applies to various plan eligibility conditions at least through the end of 2014. Comments are invited on additional examples (if any) that would be helpful to include in future regulations or other guidance.

Example 1. (i) *Facts*. Employer *W*'s group health plan provides for coverage to begin on the first day of the first payroll period on or after the date an employee is hired and completes the applicable enrollment forms. Enrollment forms are distributed on an employee's start date. Employee *A* is hired and starts on October 31, which is the first day of the payroll period. On November 2, *A* completes and files all the forms necessary to enroll in the plan. *A*'s coverage under the plan becomes effective on November 14, which is the first day of the first payroll period after *A* completes the enrollment forms.

(ii) *Conclusion*. In this Example 1, under the terms of *W*'s plan, coverage may become effective as early as October 31, depending on when *A* completes the applicable enrollment forms. Under the terms of the plan, when coverage becomes effective is dependent solely on the length of time taken by *A* to complete the enrollment materials. Therefore, under the terms of the plan, *A* may elect coverage that would begin on a date that does not exceed the 90-day waiting period limitation, and the plan complies with PHS Act section 2708.

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[3] 26 CFR 54.9801–3(a)(3)(iii), 29 CFR 2590.701–3(a)(3)(iii), 45 CFR 146.111(a)(3)(iii).

[4] *See www.irs.gov/file_source/pub/irs-drop/n–11–36.pdf.*

[5] Department of Labor Technical Release 2012–01, IRS Notice 2012–17, and HHS FAQs issued February 9, 2012.

[6] IRS Notice 2012–58 provides guidance regarding the measurement period that may be used under Code section 4980H. That guidance provides a safe harbor method under which an applicable large employer may use a measurement period of up to 12 months to determine whether certain types of new employees are full-time employees, without being subject to an assessable payment under Code section 4980H for that period with respect to such employees.

Example 2. (i) *Facts*. Employer *X*'s group health plan limits eligibility for coverage to full-time employees. Coverage becomes effective on the first day of the calendar month following the date the employee becomes eligible. Employee *B* begins working full time for Employer *X* on April 11. Prior to this date, *B* worked part time for *X*. *B* enrolls in the plan and coverage is effective May 1.

(ii) *Conclusion*. In this Example 2, the period from April 11 through April 30 is a waiting period. The period while *B* was working part time is not part of the waiting period because *B* was not in a class of employees eligible for coverage under the terms of the plan while working part time, and full-time versus part-time status is a *bona fide* employment-based condition that is not considered to be designed to avoid compliance with the 90-day waiting period limitation.

Example 3. (i) *Facts*. Under Employer *Y*'s group health plan, only employees who work full time (defined under the plan as regularly working 30 hours per week) are eligible for coverage. Employee *C* begins work for Employer *Y* on November 26 of Year 1. *C*'s hours are reasonably expected to vary, with an opportunity to work between 20 and 45 hours per week, depending on shift availability and *C*'s availability. Therefore, it cannot be determined at *C*'s start date that *C* is reasonably expected to work full time. Under the terms of the plan, variable- hour employees, such as *C*, are eligible to enroll in the plan if they are determined to be full time after a measurement period of 12 months. Coverage is made effective no later than the first day of the first calendar month after the applicable enrollment forms are received. *C*'s 12-month measurement period ends November 25 of Year 2. *C* is determined to be full time and is notified of C's plan eligibility. If *C* then elects coverage, *C*'s first day of coverage will be January 1 of Year 3.

(ii) *Conclusion*. In this Example 3, the measurement period is not considered to be designed to avoid compliance with the 90-day waiting period limitation (and is, therefore, permissible) because the plan may use a reasonable period of time to determine whether a variable-hour employee is full time under PHS Act section 2708 if the period of time is consistent with the timeframe permitted for such determinations under Code section 4980H. In such circumstances, the time period for determining whether an employee is full time will not be considered to avoid the 90-day waiting period limitation if coverage can become effective no later than 13 months from *C*'s start date, plus the time remaining until the first day of the next calendar month.

Example 4. (i) *Facts*. Employee *D* begins working 25 hours per week for Employer *Z* on January 3 and is considered a part-time employee for purposes of *Z*'s group health plans. *Z* sponsors a group health plan that provides coverage to part-time employees after they have completed a cumulative 1,200 hours of service. *D* satisfies the plan's cumulative hours of service condition on December 15.

(ii) *Conclusion*. In this Example 4, the cumulative hours of service condition with respect to part-time employees is not considered to be designed to avoid compliance with the 90-day waiting period limitation. Accordingly, coverage for *D* under the plan must begin no later than the 91st day after *D* works 1,200 hours. (If the plan's cumulative hours of service requirement were more than 1,200 hours, the Departments would consider the requirement to be designed to avoid compliance with the 90-day waiting period limitation.)

V. *RELIANCE*

Employers, plans and issuers may rely on the compliance guidance in this notice at least through the end of 2014. An employee or related individual is not eligible for minimum essential coverage under the plan (and therefore may be eligible for a premium tax credit or cost-sharing reduction) during any period when coverage is not offered, including any measurement period or administrative period prior to when coverage takes effect. Thus, all employees, whether full-time, part-time, or variable, who are not offered the opportunity to enroll in health insurance by their employer will be eligible to receive premium tax credits and cost-sharing reductions for Exchange coverage if they meet other conditions for receipt of these credits.

VI. *REQUEST FOR COMMENTS*

Comments are requested by September 30, 2012. *Warning*: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet as received, and can be retrieved by most Internet search engines. Comments may be submitted anonymously. Comments will be shared among the Departments.

Comments may be sent electronically to: *e-ohpsca-er.ebsa@dol.gov*. Alternatively, comments may be sent via mail or hand delivery to: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

VII. *FOR FURTHER INFORMATION*

The Departments have coordinated on the guidance and other information contained in this notice and are publishing substantively identical issuances. Questions concerning the information contained herein may be directed to the Internal Revenue Service at 202–622–6080; the Department of Labor's Office of Health Plan Standards and Compliance Assistance at 202–693–8335; or the Department of HHS at 410–786–1565 or *phig@cms.hhs.gov*. Additional information for employers regarding the Affordable Care Act is available at *www.healthcare.gov* and *www.dol.gov/ebsa/healthreform*.

Per Capita Payments From Proceeds of Settlements of Indian Tribal Trust Cases

Notice 2012–60

PURPOSE

This notice provides guidance concerning the federal income tax treatment of *per capita* payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes.

BACKGROUND

The United States has entered into settlement agreements with the federally recognized Indian tribes listed in the Appendix to this notice, settling litigation in which the tribes allege that the Department of the Interior and the Department of the Treasury mismanaged monetary assets and natural resources the United States holds in trust for the benefit of the tribes ("Tribal Trust cases"). Upon receiving the settlement proceeds, the tribes will dismiss their claims with prejudice. *See* Press Release, U.S. Department of Justice, Attorney General Holder and Secretary Salazar Announce $1 Billion Settlement of Tribal Trust Accounting and Management Lawsuits Filed by More Than 40 Tribes (April 11, 2012) *at http://www.justice.gov/opa/pr/2012/April/12-ag-460.html*. The United States foresees the possibility of future substantially similar settlements of substantially similar claims brought by other federally recognized Indian tribes.

Most of the Indian tribes that have reached Tribal Trust case settlements with the United States have directed that the settlement proceeds be transferred to accounts at private banks or other third-party institutions, where the proceeds will be invested until the tribes use the funds for various purposes, which may include making *per capita* payments to their members. Other Indian tribes have directed that all or part of the settlement proceeds be paid into a trust account established or maintained by the Secretary of the Interior, through the Office of the Special Trustee for American Indians, for the benefit of the tribes, until the tribes provide instructions for the disposition of the funds, which may include making *per capita* payments to their members.

Although agreeing to settlements, the United States admits no liability in the Tribal Trust case settlements and the government has no fiduciary responsibilities over the Tribal Trust case settlement proceeds that the tribes receive and that are deposited into accounts at private banks or other third-party institutions.

CONSULTATION

Several tribes and other affiliated organizations requested direct consultation on the income tax treatment of *per capita* payments from the Tribal Trust case settlements. In response to these requests and in the spirit of Executive Order 13175, direct consultation and communication occurred. These consultations and conversations were extremely useful in preparing this notice.

APPLICABLE PROVISIONS OF LAW

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under § 61, Congress intends to tax all gains and undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955–1 C.B. 207. Indians are citizens subject to the payment of income taxes. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956), 1956–1 C.B. 605.

The Per Capita Act, Pub. L. No. 98–64, 97 Stat. 365, 25 U.S.C. §§ 117a through 117c, provides authority to Indian tribes to make *per capita* payments to Indians out of tribal trust revenue. Under 25 U.S.C. § 117a, funds held in trust by the Secretary of the Interior for an Indian tribe that are to be distributed *per capita* to members of that tribe may be distributed by either the Secretary of the Interior or, at the request of the governing body of the tribe and subject to the approval of the Secretary of the Interior, the tribe.

The Indian Tribal Judgment Funds Use or Distribution Act, 25 U.S.C. §§ 1401 through 1408, concerns the distribution of certain judgment funds to Indian tribes. Under 25 U.S.C. § 117b(a), funds distributed under 25 U.S.C. § 117a are subject to the provisions of 25 U.S.C. § 1407. Under 25 U.S.C. § 1407, the funds described in that section, and all interest and investment income accrued on the funds while held in trust, are not subject to federal income taxes. *See also* H.R. Rep. No. 98–230 at 3 (1983), which provides that *per capita* distributions of tribal trust revenue "shall be subject to the provisions of [25 U.S.C. § 1407] with respect to tax exemptions."

To determine the federal income tax treatment of *per capita* payments from Tribal Trust case settlement proceeds, "the test is not whether the action was one in tort or contract, but rather the question to be asked is 'In lieu of what were the damages awarded?'" *See Raytheon Production Corp. v. Commissioner*, 144 F.2d 110, 113 (1st Cir. 1944), *aff'g* 1 T.C. 952 (1943). The fact that a suit ends in a compromise settlement does not change the nature of the recovery; the determining factor is the nature of the underlying claim. *Raytheon Production Corp.* at 114. Therefore, although the United States admits no liability in the Tribal Trust cases, *Raytheon Production Corp.* requires an examination of the underlying *claims* asserted by the tribes. The Tribal Trust case settlements described in this notice resolve claims, in relevant part, that the Department of the Interior and the Department of the Treasury mismanaged trust accounts, lands, and natural resources. The tribes assert that, absent this mismanagement of their trust funds and resources, their government administered trust fund accounts would have substantially larger balances. *See* 25 C.F.R. §§ 115.002 and 115.702 (which define the trust fund accounts maintained and held by the Secretary of the Interior for federally recognized tribes and the types of payments that must be accepted into the trust account, which include those resulting from use of trust lands or restricted fee lands or trust resources when paid directly to the Secretary of the Interior on behalf of the tribal account holder). The settlement proceeds from the Tribal Trust cases must be viewed as being in lieu of amounts that would have been held in a trust fund account for the tribe that is maintained by the Secretary of the Interior. Consequently, for federal income tax purposes, *per capita* payments that an Indian tribe makes from the tribe's Tribal Trust case settlement proceeds are treated the same as *per capita* payments from funds held in trust by the Secretary of the Interior under 25 U.S.C. § 117a. *See Raytheon Production Corp.* at 113–114; *see also* 25 U.S.C. § 1407 and H.R. Rep. No. 98–230 at 3 (1983).

FEDERAL INCOME TAX TREATMENT

Under 25 U.S.C. § 117b(a), *per capita* payments made from the proceeds of an agreement between the United States and an Indian tribe settling the tribe's claims that the United States mismanaged monetary assets and natural resources held in trust for the benefit of the tribe by the Secretary of the Interior are excluded from the gross income of the members of the tribe receiving the *per capita* payments. *Per capita* payments that exceed the amount of the Tribal Trust case settlement proceeds and that are made from an Indian tribe's private bank account in which the tribe has deposited the settlement proceeds are included in the gross income of the members of the tribe receiving the *per capita* payments under § 61. For example, if an Indian tribe receives proceeds under a settlement agreement, invests the proceeds in a private bank account that earns interest, and subsequently distributes the *entire* amount of the bank account as *per capita* payments, then a member of the tribe excludes from gross income that portion of the member's *per capita* payment attributable to the settlement proceeds and must include the remaining portion of the *per capita* payment in gross income.

LIMITATION

This notice applies only to *per capita* payments from proceeds of the Tribal Trust case settlements that are described in this notice and that the United States has entered into with the Indian tribes listed in the Appendix to this notice or to proceeds of Tribal Trust case settlements that are subsequently identified as being subject to this notice on the Indian Tribal Governments page on the Internal Revenue Service website, *www.irs.gov*. The federal income tax treatment of other *per capita* payments made by the Secretary of the Interior or Indian tribes to members of Indian tribes is outside the scope of this notice and may be addressed in future guidance.

DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information, please contact Mr. Iskow at (202) 622–4920 (not a toll-free call).

Appendix

Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy's Reservation
7. Coeur d'Alene Tribe
8. Confederated Salish and Kootenai Tribes
9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona
17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation
23. Mescalero Apache Tribe
24. Minnesota Chippewa Tribe
25. Nez Perce Tribe
26. Nooksack Indian Tribe
27. Northern Cheyenne Tribe of Indians
28. Omaha Tribe o Nebraska
29. Passamaquoddy Tribe of Maine
30. Pawnee Nation
31. Prairie Band of Potawatomi Nation
32. Pueblo of Zia
33. Quechan Tribe of the Fort Yuma Reservation
34. Red Cliff Band of Lake Superior Chippewa Indians
35. Rincon Luiseño Band of Indians
36. Rosebud Sioux Tribe
37. Round Valley Indian Tribes
38. Salt River Pima-Maricopa Indian Community
39. Santee Sioux Tribe of Nebraska
40. Sault Ste. Marie Tribe
41. Shoshone-Bannock Tribes of the Fort Hall Reservation
42. Soboba Band of Luiseno Indians
43. Spirit Lake Dakotah Nation
44. Spokane Tribe of Indians
45. Standing Rock Sioux Tribe
46. Stillaguamish Tribe of Indians
47. Summit Lake Paiute Tribe
48. Swinomish Indian Tribal Community
49. Te-Moak Tribe of Western Shoshone Indians
50. Tohono O'odham Nation
51. Tulalip Tribes
52. Tule River Indian Tribe
53. Ute Indian Tribe of the Uintah and Ouray Reservation
54. Ute Mountain Ute Tribe
55. Winnebago Tribe of Nebraska

Use this Revenue Procedure to prepare Tax Year *2012* and prior year information returns for submission to Internal Revenue Service (IRS) using electronic filing.

Caution to filers:

Please read this publication carefully. Persons or businesses required to file information returns electronically may be subject to penalties for failure to file or include correct information if the instructions in this Revenue Procedure are not followed.

Important notes:

The IRS internet connection for filing information returns electronically is http://fire.irs.gov. The Filing Information Returns Electronically (FIRE) system *and the test system* will be down from 6 p.m. ET *December 14, 2012, through January 02, 2013* for yearly updates. In addition, the FIRE system may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates. The FIRE system will not be available for submissions during these times.

Form 4419, *Application for Filing Information Returns Electronically (FIRE)*, is subject to review before the approval to transmit electronically is granted. IRS may require additional documentation. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of the files.

The FIRE system does not provide fill-in forms for filing information returns.

Rev. Proc. 2012–37

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Part A. General

Part B. Electronic Filing Specifications

Part A. General

Revenue Procedures are generally revised periodically to reflect legislative and form changes. Comments concerning this Revenue Procedure, or suggestions for making it more helpful, can be addressed to:

Internal Revenue Service
Attn: Information Returns Branch
230 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

Sec. 1. Purpose

.01 This Revenue Procedure supersedes *Rev. Proc. 2011–51* published as Publication 1239 (Rev. October 31, 2011), *Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically.*

.02 The purpose of this Revenue Procedure is to provide the specifications for filing Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*, with the IRS electronically through the IRS FIRE system. This Revenue Procedure must be used for the preparation of Form 8027 for Tax Year 2012 and tax years prior to 2012 filed *beginning January 1, 2013.*

.03 All data received for processing will be given the same protection as individual income tax returns (Form 1040). The IRS will process the data and determine if the records are formatted and coded according to this Revenue Procedure.

.04 Generally, the box numbers on the paper forms correspond with the amount codes used to file electronically; however, if discrepancies occur, the instructions in this Revenue Procedure must be followed when filing electronically.

.05 The Instructions for Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*, provide more detailed filing procedures for form 8027.

Sec. 2. What's New for Tax Year 2012

.01 "Nature of Changes-Current Year" has been changed to "What's New for Tax year 2012".

.02 Payment Year must be updated with the four digit reporting year (2011 to 2012), unless reporting prior year data.

.03 Form 4419, *Application for Filing Information Returns Electronically (FIRE)*, must be submitted at least 45 days before the due date of the return(s) to allow the IRS the minimum amount of time necessary to process and respond to applications.

.04 A User Note area has been added between Part B and Part C.

Reminders

In this publication, all titles of forms and publications and pertinent changes for Tax Year *2012* are emphasized by the use of *italics*. Portions of text that require special attention are in boldface text.

Filers are encouraged to read the publication in its entirety.

Sec. 3. Where To File and How to Contact the IRS, Information Returns Branch (IRB)

.01 All information returns filed through the FIRE system are processed at the IRS. General inquiries concerning the filing of information returns should be sent to the following address:

Internal Revenue Service
Information Returns Branch
230 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

.02 All requests for an extension of time to file information returns with IRS filed on Form 8809, *Application for Extension of Time*, or requests for an extension to provide recipient copies, and requests for undue hardship waivers filed on Form 8508, *Request for Waiver from Filing Information Returns Electronically*, should be sent to the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

.03 The telephone numbers and web addresses for questions about specifications for electronic submissions are:

Information Returns Branch
1–866–455–7438
Outside the U.S. 1–304–263–8700

Telecommunication Device for the Deaf (TDD)
1–304–579–4827

Fax
Within the U.S. — 1–877–477–0572
Outside the U.S. — 304–579–4105

Filing Information Returns Electronically (FIRE) System—http://fire.irs.gov
FIRE Test System—http://fire.test.irs.gov

TO OBTAIN FORMS:
By phone — 1–800–TAX–FORM (1–800–829–3676)
IRS.gov — Online Ordering for Information Returns and Employer Returns
http://www.irs.gov/businesses/page/0,,id=23108,00.html

.04 The 2012 Instructions for Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*, are included in Publication 1239 for the convenience of filers.

.05 Form 4419, *Application for Filing Information Returns Electronically (FIRE)*, Form 8809, *Application for Extension of Time to File Information Returns*, and Form 8508, *Request for Waiver From Filing Information Returns Electronically*, may be faxed to IRS at 1–877–477–0572.

.06 Electronic Products and Services Support, Information Returns Branch (IRB), answers electronic, paper filing, and tax law questions from the payer community relating to the correct preparation and filing of information returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, 8027, 8935 and W-2G). IRB also answers questions about the electronic filing of Forms 1042-S, 8027, and 8955-SSA. In addition, IRB answers questions about tax law and paper filing instructions for Forms W-2 and W-3. Inquiries pertaining to Notices CP2100 and 972CG, backup withholding, and reasonable cause requirements due to missing and incorrect Taxpayer Identification Numbers (TINs) are also addressed by IRB. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Time (ET), by calling 1–866–455–7438.

Call as soon as questions arise to avoid the busy filing seasons at the end of January, February, and March. Recipients of information returns (payees) should continue to contact 1–800–829–1040 with any questions on how to report the information returns data on their individual tax returns.

IRB also offers an email address for transmitters and electronic filers of information returns. The address is mccirp@irs.gov. When sending emails concerning specific file information, include the company name and the electronic filename or Transmitter Control Code (TCC). Do not submit TINs or attachments, because electronic mail is not secure and the information may be compromised.

.07 IRB does not answer questions on penalty notices or requests for abatement of the penalty, refer to the Penalties section of the *2012 General Instructions for Certain Information Returns*. Penalty notices contain an IRS representative's name and/or telephone number for contact purposes or a response may be required in writing sent to the address provided.

.08 IRB assistors cannot advise filers where to send state copies of paper forms. Filers must contact the tax department in the state where the recipient resides to obtain the correct address and filing requirements.

.09 Form 8027-T, *Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips*, is used to transmit Form 8027 to the IRS. Follow the mailing instructions on Form 8027-T and submit the paper returns to the appropriate IRS Service Center.

.10 Questions pertaining to electronic filing of Forms W-2, *Wage and Tax Statement*, must be directed to the Social Security Administration (SSA). Filers can call 1–800–772–6270 to obtain the telephone number of the SSA Employer Service Liaison Officer for their area.

.11 A taxpayer or authorized representative may request a copy of a tax return, including Form W-2 filed with a return, by submitting Form 4506, *Request for Copy of Tax Return*, to IRS. See section 3.03 for information on obtaining paper forms. For questions regarding this form, call 1–800–829–1040.

Sec. 4. Filing Requirements and Due Dates

.01 The regulations under section 6011(e)(2)(A) of the Internal Revenue Code provide that any person, including a corporation, partnership, individual, estate, or trust, who is required to file 250 or more information returns must file such returns electronically. The 250 or more requirement applies separately for each type of return and separately to each type of corrected return. **Note:** Filers are encouraged to file information returns electronically even if they do not meet the required 250 information returns.

.02 All filing requirements that follow apply individually to each reporting entity as defined by its separate Taxpayer Identification Number (TIN). For example, if a corporation with several branches or locations uses the same Employer Identification Number (EIN), the corporation must aggregate the total volume of returns to be filed for that EIN and apply the filing requirements to each type of return accordingly.

.03 The above requirements do not apply in cases of undue hardship (see Part A, Sec. 5).

.04 Filers must not submit the same information on paper forms that are submitted electronically, since this will result in duplicate filing. This does not mean that corrected documents should not be filed. If a return has been prepared and submitted improperly, a corrected return must be filed as soon as possible. Refer to Part A, Sec. 9, for requirements and instructions for filing corrected returns.

.05 When an allocation of tips is based on a good-faith agreement, a copy of the agreement must be submitted within three business days after receiving acknowledgement that the IRS has accepted the electronically filed Form 8027. Fax the agreement to 859–669–2256 or mail a copy of this agreement to:

Internal Revenue Service
Attn: ICO ERS Stop 36101
201 West River Center Blvd.
Covington, KY 41011

In the fax transmittal or cover letter, the filer must include the words "Form 8027 attachment(s)" and the following information with respect to the Form 8027 to which the agreement applies: name of establishment, name of employer, EIN (Employer Identification Number), establishment number, Transmitter Control Code (TCC), and the tax year of the Form 8027.

.06 Employers can request a lower rate (but not lower than two percent) for tip allocation purposes by submitting an application to the IRS. See Sec. 31.6053–3(h) of the Employment Tax Regulations. Detailed instructions for requesting a lower rate can be found in the Instructions for Form 8027. The IRS will issue a determination letter to notify the employer when and for how long a reduced rate is effective. If a lower rate is used on Form 8027 based on the IRS determination letter, a copy of this letter must be submitted within three business days after receiving acknowledgement that the IRS has accepted the electronically filed Form 8027. Filers must fax the letter to 859–669–2256 or mail a copy of the letter to:

Internal Revenue Service
Attn: ICO ERS Stop 36101
201 West River Center Blvd.
Covington, KY 41011

In the fax transmittal or cover letter, filers must include the words "Form 8027 attachment(s)" and the following information with respect to the Form 8027 to which the rate applies: name of establishment, name of employer, EIN, establishment number, Transmitter Control Code (TCC), and the tax year of the Form 8027.

.07 Electronic reporting to the IRS for Form 8027 must be on a calendar year basis. The due date for filing paper Forms 8027 is the last day of February. Form 8027 filed by paper is due February 28, 2013. Form 8027 filed electronically is due March 31, 2013.

.08 If the due date of the return falls on a Saturday, Sunday, or legal holiday, filing Form 8027 on the next day that is not a Saturday, Sunday, or legal holiday will be considered timely. Because March 31, 2013, falls on a Sunday, Form 8027 for tax year 2012 will be considered timely when submitted by Monday, April 1, 2013.

Sec. 5. Form 8508, *Request for Waiver from Filing Information Returns Electronically*

.01 If an employer is required to file electronically but fails to do so, and does not have an approved waiver on record, the employer will be subject to a penalty of $100 per return in excess of 250.

.02 If an employer is required to file original or corrected returns electronically, but such filing would create an undue hardship; a waiver from these filing requirements may be requested by submitting Form 8508, *Request for Waiver from Filing Information Returns Electronically*, to the IRS. Form 8508 can be obtained on the IRS website at IRS.gov or by calling 1–800–829–3676.

.03 Although an employer may submit as many as 249 corrections on paper, the IRS encourages electronic filing of corrections. Once the 250 threshold has been met, filers are required to submit any additional returns electronically. However, if a waiver for an original filing is approved, any corrections for the same type of returns will be covered under that waiver.

.04 Generally, only the employer may sign Form 8508. A transmitter may sign if given power-of-attorney; however, a letter signed by the employer stating this fact must be attached to the Form 8508.

.05 A transmitter must submit a separate Form 8508 for each employer. Do not submit a list of employers.

.06 All information requested on the Form 8508 must be provided to the IRS for the request to be processed.

.07 The waiver, if approved, will provide exemption from electronic filing for the current tax year only. Employers may not apply for a waiver for more than one tax year.

.08 Form 8508 may be photocopied or computer-generated as long as it contains all the information requested on the original form.

.09 Filers are encouraged to submit Form 8508 to the IRS at least 45 days before the due date of the returns, but no later than the due date of the returns for which the waiver is being requested. IRS does not process waiver requests until January.

.10 All waiver requests must be sent to the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

.11 File Form 8508 for the W-2 series of forms with the IRS, not SSA.

.12 Waivers are evaluated on a case-by-case basis and are approved or denied based on criteria set forth under section 6011(e) of the Internal Revenue Code. The transmitter must allow a minimum of 30 days for the IRS to respond to a waiver request.

.13 If a waiver request is approved, the transmitter should keep the approval letter on file.

.14 An approved waiver from filing Forms 8027 electronically does not provide exemption from filing. The employer must timely file Forms 8027 on acceptable paper forms with the Service Center address shown in the Instructions for Form 8027. When filing paper Forms 8027, attach a copy of the approved waiver.

Sec. 6. Form 4419, *Application for Filing Information Returns Electronically (FIRE)*

.01 For the purposes of this revenue procedure, the EMPLOYER is the organization supplying the information and the TRANSMITTER is the organization preparing the electronic file and/or sending the file to the IRS. The employer and the transmitter may be the same entity. Employers or their transmitters are required to submit Form 4419, *Application for Filing Information Returns Electronically (FIRE)*, to request authorization to file information returns with the IRS. Form 4419 is subject to review before the approval to transmit electronically is granted. The IRS may require additional documentation. If a determination is made concerning the validity of the documents transmitted electronically, the IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of files.

.02 Form 4419 can be submitted at any time during the year; however, it should be submitted to the IRS at least *45 days* before the due date of the return(s). Upon approval, a five-character alphanumeric Transmitter Control Code (TCC) will be assigned and included in an approval letter. Electronic returns may not be filed with the IRS until the application has been approved and a TCC assigned. The TCC must be included in any correspondence with the IRS.

.03 If transmitters file information returns other than Form 8027 electronically, they must obtain a separate TCC for those types of returns. The TCC assigned for Forms 8027 is to be used for the submission of these forms only.

.04 After approval to file electronically has been received, transmitters are not required to reapply each year; however, notify the IRS in writing if:

- There is a change in the contact person's name, the name of the organization or the organization's Employer Identification Number, so that the database can be updated to reflect the correct information
- The transmitter discontinued filing for two years (the TCC may have been reassigned).

.05 The IRS encourages transmitters who plan to file returns for multiple employers to submit one application and to use one TCC for all employers.

.06 Approval to file does not imply endorsement by the IRS of any computer software or of the quality of tax preparation services provided by a service bureau or software vendor.

Sec. 7. State Abbreviations

.01 The following state and U.S. territory abbreviations are to be used when developing the state code portion of address fields.

Table 1: State & U.S. Territory Abbreviations

State	Code	State	Code	State	Code
Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Maryland	MD	Pennsylvania	PA
Arkansas	AR	Massachusetts	MA	Puerto Rico	PR
California	CA	Michigan	MI	Rhode Island	RI
Colorado	CO	Minnesota	MN	South Carolina	SC
Connecticut	CT	Mississippi	MS	South Dakota	SD
Delaware	DE	Missouri	MO	Tennessee	TN
District of Columbia	DC	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Utah	UT
Georgia	GA	Nevada	NV	Vermont	VT
Guam	GU	New Hampshire	NH	Virginia	VA
Hawaii	HI	New Jersey	NJ	U.S. Virgin Islands	VI
Idaho	ID	New Mexico	NM	Washington	WA
Illinois	IL	New York	NY	West Virginia	WV
Indiana	IN	North Carolina	NC	Wisconsin	WI
Iowa	IA	North Dakota	ND	Wyoming	WY
Kansas	KS	No. Mariana Islands	MP		

.02 Filers must adhere to the city, state, and ZIP Code format for U.S. addresses. This also includes American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Note: Form 8027 is required only for establishments in the 50 states and the District of Columbia.

Sec. 8. Penalties Associated With Information Returns

.01 The following penalties generally apply to the person required to file information returns. The penalties apply to electronic filers as well as to paper filers.

.02 Failure To File Correct Information Returns by the Due Date (Section 6721). If you fail to file a correct information return by the due date and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to file timely, you fail to include all information required to be shown on a return, or you include incorrect information on a return. The penalty also applies if you file on paper when you were required to file electronically, you report an incorrect TIN or fail to report a TIN, or you fail to file paper forms that are machine readable.

The amount of the penalty is based on when you file the correct information return. The penalty is:

- **$30** per information return if you correctly file within 30 days of the due date of the return (See Part A, Sec. 4.07); maximum penalty $250,000 per year ($75,000 for small businesses).
- **$60** per information return if you correctly file more than 30 days after the due date but by August 1, 2013; maximum penalty $500,000 per year ($200,000 for small businesses).
- **$100** per information return if you file after August 1, 2013 or you do not file required information returns; maximum penalty $1.5 million per year ($500,000 for small businesses).

.03 Late Filing Penalty. If a replacement file is not transmitted by the required date, a penalty may be assessed. See Part B, Sec. 4.05, for more information on replacement files.

.04 Intentional Disregard of Filing Requirements. If the failure to file correct information returns is due to intentional disregard of the filing requirements, the penalty is at least $250 per information return with no maximum penalty.

.05 Failure to Furnish Correct Payee Statements (Section 6722). For information regarding penalties which may apply to failure to furnish correct payee statements, see the Penalties Section of the *2012 General Instructions for Forms W-2 and W-3*.

Sec. 9. Corrected Returns, Paper Forms, and Computer-Generated Forms

.01 If returns must be corrected, approved electronic filers must provide such corrections electronically if filing 250 or more corrected forms. If filed electronically, corrected returns are identified by using the "Corrected 8027 Indicator" in field position 370 of the employer record.

.02 A correction file must be identified by entering the correction indicator "G" in position 370.

.03 When replacing a correction file that was bad, a replacement file must be submitted. When replacing a correction file, the correction indicator "G" must be entered in position 370.

.04 If corrections are not submitted electronically, employers must submit them on official Forms 8027. Substitute forms that have been previously approved by the IRS, or computer-generated forms that are exact facsimiles of the official form (except for minor page size or print style deviations), may be submitted without obtaining IRS approval before using the form.

.05 Employers may send corrected paper Forms 8027 to the IRS at the address shown in Part A, Sec. 9.06. Corrected paper returns are identified by marking the "AMENDED" check box on Form 8027.

.06 If filing more than one paper Form 8027, attach a completed Form 8027-T, *Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips*, to the Forms 8027 and send to:

Department of the Treasury
Internal Revenue Service Center
Cincinnati, OH 45999

IRB processes Forms 8027 submitted electronically only. Employers must not send paper Forms 8027 to IRB.

.07 If part of a submission is filed electronically and the rest of the submission is filed on paper Forms 8027, send the paper forms to the Service Center address shown in the Instructions for Form 8027. For example, Forms 8027 were filed electronically with IRS, and later ten of the forms filed need to be corrected. The filer may submit the corrections on paper Forms 8027 because the number of corrections filed is under the 250 threshold. These corrected paper Forms 8027 must be sent, along with Form 8027-T, to the Service Center address shown in the Instructions for Form 8027.

Sec. 10. Validation of Form 8027 at IRS

.01 The accuracy of data reported on Form 8027 will be validated at the IRS Service Center. All fields indicated as "Required" in the record layout must contain valid information. If the IRS identifies an error, filers will be notified and required to provide correct information.

.02 The address for the establishment must agree with the state and zip code. If there are inconsistencies or if the zip code does not agree with the address, it will result in a file status of "Bad."

.03 All alpha characters must be in upper case.

.04 The following is a clarification of monetary amount requirements:

(a) Charged Receipts (positions 260–271) must exceed Charged Tips (positions 248–259).

(b) Total Tips Reported (positions 308–319) must equal the combined amount of the Indirect Tips (positions 284–295) and Direct Tips (positions 296–307).

(c) Gross Receipts (positions 320–331) must exceed all other monetary amounts with the exception that Gross Receipts could equal Charged Receipts if all transactions were conducted on charge cards.

(d) The Tip Percentage Rate Times Gross Receipts (332–343) must equal the Gross Receipts times the Tip Rate. Normally, the Tip Rate is 8 percent. The Tip Rate must be entered as 0800 in positions 344–347 unless the IRS has granted a lower rate.

(e) Generally, an employer would have allocated tips if the Total Tips Reported (positions 308–319) is less than the Tip Percentage Rate Times Gross Receipts (positions 332–343). The difference must be entered as Allocated Tips (positions 348–359).

Sec. 11. Definition of Terms

ELEMENT	DESCRIPTION
Correction	A correction is an information return submitted by the employer/transmitter to correct an information return that was previously submitted to and successfully processed by the IRS, but contained erroneous information.
EIN	A nine-digit Employer Identification Number which has been assigned by the IRS to the reporting entity.
Employees hours worked	The average number of employee hours worked per business day during a month is figured by dividing the total hours worked during the month by all your employees who are employed in a food or beverage operation by the average number of days in the month that each food or beverage operation at which these employees worked was open for business.
Employer	The entity or individual required to report the information. Use the same name and EIN used on Forms W-2 and Forms 941.
Establishment	A large food or beverage establishment that provides food or beverage for consumption on the premises; where tipping is a customary practice; and where there are normally more than ten employees who work more than 80 hours on a typical business day during the preceding calendar year.
File	For the purpose of this revenue procedure, a file is the Form 8027 information submitted electronically by an Employer or Transmitter.
More than ten employees	An employer is considered to have more than ten employees on a typical business day during the calendar year if half the sum of: the average number of employee hours worked per business day in the calendar month in which the aggregate gross receipts from food and beverage operations were greatest, plus the average number of employee hours worked per business day in the calendar month in which the total aggregate gross receipts from food and beverage operations were the least, equals more than 80 hours.
Replacement	A replacement is an information return file sent by the employer/transmitter at the request of the IRS because of errors encountered while processing the filer's original file or correction file.
Transmitter	The person or organization preparing electronic file(s). This may be the employer or an agent of the employer.
Transmitter Control Code (TCC)	A five-character alphanumeric code assigned by the IRS to the transmitter prior to electronically filing. This number is inserted in the record and must be present in all files submitted electronically through the FIRE system. An application (Form 4419) must be filed with the IRS to receive this number.

Part B. Electronic Filing Specifications

Note 1: The FIRE system does not provide fill-in forms, except for Form 8809, *Application for Extension of Time to File Information Returns*. Filers must program files according to the Record Layout Specifications contained in this publication. For a list of software providers, log on to IRS.gov and type "*Business e-file Providers*" in the Search box.

Note 2: The FIRE *and FIRE Test* systems may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates and for two weeks at the end of the year for yearly updates. The FIRE *and FIRE Test* systems will not be available for submissions during these times.

Sec. 1. General

.01 Electronic filing of Forms 8027, originals and replacements, is a reporting method required for filers submitting 250 or more Forms 8027. Employers who are under the filing threshold requirement are encouraged to file electronically.

.02 All electronic filings of information returns are received at the IRS through the FIRE system. To connect to the FIRE system, point the browser to http://fire.irs.gov. The system is designed to support the electronic filing of information returns only.

.03 The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each program. Only inquiries concerning electronic filing of information returns should be directed to IRB.

.04 Files submitted to the IRS electronically must be in standard ASCII code. Do not send paper forms with the same information as electronically submitted files. This creates duplicate reporting resulting in penalty notices.

.05 Form 8809, *Application for Extension of Time to File Information Returns*, is available as a fill-in form on the FIRE system. Filers that do not already have a User ID and password should refer to Section 7. At the Main Menu, click "Extension of Time Request" and then click "Fill-in Extension Form". This option is only used to request an automatic 30 day extension and must be completed by the due date of the return for each employer requesting an extension. Filers should print the approval page for a record of the approved extension. Refer to Part D for additional details.

Sec. 2. Electronic Filing Approval Procedure

.01 Filers must obtain a Transmitter Control Code (TCC) prior to submitting files electronically. Refer to Part A, Sec. 6, for information on how to obtain a TCC.

.02 Once a TCC is obtained, electronic filers must create a User ID, password, and PIN (Personal Identification Number). See Part B, Sec. 5, for more information about PIN requirements.

.03 If a filer is submitting files for more than one TCC, it is not necessary to create a separate User ID and password for each TCC.

.04 For all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and must be eight alphanumeric characters containing at least one uppercase, one lowercase, and one numeric. Filers who forget their password or PIN, can call 1–866–455–7438 for assistance. The FIRE system requires users to change passwords every 90 days or at the first logon attempt after the 90-day time frame. Users can change passwords at any time from the Main Menu. The previous 24 passwords cannot be used.

Sec. 3. Test Files

.01 Electronic information return filers are not required to submit a test file; however, the submission of a test file is encouraged for all new electronic filers to test hardware and software. If filers wish to submit an electronic test file for Tax Year *2012* (returns to be filed in *2013*), it must be submitted to IRS no earlier than *November 1, 2012*, and no later than *February 15, 2013*. To connect to the FIRE test system, point the browser to http://fire.test.irs.gov.

.02 Filers who encounter problems while transmitting the electronic test file can contact IRS at 1–866–455–7438 for assistance.

.03 Filers will be notified by email as to the acceptability of the file (if a valid email address was provided on the "Verify Your Filing Information" screen) within five days after a file has been submitted. If you are using email filtering software, configure software to accept email from fire@irs.gov and irs.e-helpmail@irs.gov. If the file is bad, the filer must return to http://fire.test.irs.gov to determine what errors are in the file by clicking on CHECK FILE STATUS. If an email is not received within five business days, filers should log into the FIRE system and click on CHECK FILE STATUS to view the results of the file.

Sec. 4. Electronic Submissions

.01 Electronically filed information may be submitted to IRS 24 hours a day, seven days a week. Technical assistance is available Monday through Friday between 8:30 a.m. and 4:30 p.m. ET by calling: 1–866–455–7438.

.02 The FIRE *and FIRE Test* system will be down from 6:00 p.m. ET *December 14, 2012, through January 2, 2013*. This allows IRS to make yearly updates to reflect current year changes. In addition, the FIRE *and FIRE Test* systems may be down every Wednesday from 2:00 a.m. to 5:00 a.m. ET for programming updates. The FIRE system will not be available for submissions during these times.

.03 A file may not exceed 2.5 million records. When sending files larger than 10,000 records electronically, data compression is encouraged. WinZip and PKZIP are the only acceptable compression packages. IRS cannot accept self-extracting zip files or compressed files containing multiple files. The amount of time required to transmit information returns electronically will vary depending upon the type of connection to the internet and if data compression is used. The time required to transmit a file can be reduced up to 95 percent by using compression. *If you are having trouble transmitting files with a scripting process, please contact IRS at 1–866–455–7438 for assistance.*

.04 Transmitters may create files using self assigned filename(s). Files submitted electronically will be assigned a new unique filename by the FIRE system. The filename assigned by the FIRE system will consist of the submission type, the filer's TCC and a four-digit sequence number. The sequence number will be incremental for every file sent. For example, if this is the first original file for the calendar year and the TCC is 44444, the IRS assigned filename would be ORIG.44444.0001. Record the filename. This information will be needed by the IRS to identify the file, if assistance is required.

.05 If a timely submitted file is bad, the filer will have up to 60 days from the day the file was transmitted to submit an acceptable replacement file. If an acceptable replacement file is not received within 60 days, the employer may be subject to late filing penalties.

.06 The definitions of "correction" and "replacement" have been provided in Part A Section 11 to help distinguish between a correction and a replacement: **Note:** Corrections should only be made to records that have been submitted incorrectly, not the entire file. Filers should never transmit anything to the IRS as a "Replacement" file unless the CHECK FILE STATUS option on the FIRE system indicates a previous file was bad.

.07 Prior year data may be submitted; however, each tax year must be submitted in a separate file transmission. For prior year data, use the current year format, enter the tax year being reported in field positions 375–378, and enter a "P" in field position 379 to indicate the file contains prior year data.

Sec. 5. PIN Requirements

.01 Filers will be prompted to create a PIN consisting of ten (10) numeric characters when establishing an initial User ID name and password.

.02 The PIN is required each time an ORIGINAL, CORRECTION, or REPLACEMENT file is sent electronically and is permission to release the file. The PIN is not needed for a TEST file. Authorized agent may enter their PIN; however, the payer is responsible for the accuracy of the returns. The payer will be liable for penalties for failure to comply with filing requirements. If there is a problem with a PIN, filers should call 1–866–455–7438 for assistance.

Sec. 6. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 8027, 1097, 1098, 1099, 3921, 3922, 5498, 8935, 8955-SSA, W-2G, and 1042-S.

.02 A transmitter must have a TCC (see Part A, Sec. 6) before a file can be transmitted.

.03 The results of the electronic transmission(s) will be sent to the email address that was provided on the "Verify Your Filing Information" screen within five days of transmission. If you are using email filtering software, configure the software to accept email from fire@irs.gov and irs.e-helpmail@irs.gov. If the email indicates the file is bad, the filer must log into the FIRE system and go to the CHECK FILE STATUS area to determine what errors are in the file. If filers do not receive an email in five business days, they must log back into the FIRE system and click on CHECK FILE STATUS to view the results of the file.

Sec. 7. Connecting to the FIRE System

.01 Have the TCC and TIN available before connecting.

.02 Turn off pop-up blocking software before transmitting files.

.03 Make sure the browser supports the security standards listed below.

.04 Set the browser to receive "cookies." Cookies are used to preserve the User ID status.

.05 Point the browser to http://fire.irs.gov to connect to the FIRE system or http://fire.test.irs.gov to connect to the FIRE test system (November 1, 2012 through February. 15, 3013).

.06 FIRE Internet Security Technical Standards are:

HTTP 1.1 Specification (http://www.w3.org/Protocols/rfc2616/rfc2616.txt).

SSL 3.0 or TLS 1.0. SSL and TLS are implemented using SHA and RSA 1024 bits during the asymmetric handshake.

The filer can use one of the following encryption algorithms, listed in order of priority, using SSL or TLS:

AES 256-bit (FIPS-197)

AES 128-bit (FIPS-197)

TDES 168-bit (FIPS-46-3)

.07 First time connection to The FIRE System (If there has been a previous logon, skip to "Subsequent Connections to the FIRE system.")

- Click **"Create New Account"**
- Fill out the registration form and click **"Submit"**
- Create **User ID**
- Create and verify **password** (The password is user created and must be eight alphanumeric characters, containing at least one uppercase, one lowercase, one numeric and cannot contain the User ID. The FIRE system requires passwords to be changed every 90 days or at the first logon attempt after 90 days. The previous 24 passwords cannot be used.)
- Click **"Create"**
- If the message **"Account Created,"** is received, click **"OK"**
- Create and verify the ten-digit self-assigned PIN (Personal Identification Number)
- Click **"Submit"**
- If the message "Your PIN has been successfully created!" is received, click **"OK"**
- Read the bulletin(s) and/or **"Click here to continue"**

.08 Subsequent connections to the FIRE system

- Click **"Log On"**
- Enter the **User ID**
- Enter the **Password** (the password is case sensitive)
- Read the bulletin(s) and/or **"Click here to continue"**

.09 Uploading a file to the FIRE System

At the Menu Options:

- Click **"Send Information Returns"**
- Enter the **TCC**
- Enter the **TIN**
- Click **"Submit"**

The system will then display the company name, address, city, state, ZIP code, telephone number, contact and email address. This information will be used to email the transmitter regarding the transmission. Update as appropriate and/or Click **"Accept."**

Note: Please provide an accurate email address for the correct person to receive the email and to avoid having the email returned to the IRS as undeliverable. If SPAM filtering software is being used, configure it to allow an email from fire@irs.gov and irs.e-helpmail@irs.gov.

Click one of the following:

- **Original File**
- **Replacement File**
- **Correction File**
- **Test File** (This option will only be available from November 1 through February 15 at http://fire.test.irs.gov.)

.09 Uploading a file to the FIRE System

Enter the ten-digit PIN (If sending a test file, there is no prompt for this.)

- Click **“Submit”**
- Click **“Browse”** to locate the file and open it
- Click **“Upload”**

When the upload is complete, the screen will display the total bytes received and the IRS assigned filename for the file.

Note: If this information is not displayed on the screen, IRB may not have received the file.

To verify, go to the “CHECK FILE STATUS” option on the Main Menu. If the filename is displayed, the count is equal to “0,” and the results indicate “not yet processed,” IRS received the file. If the filename is not displayed, send the file again.

If there are more files to upload for that TCC:

- Click **“File Another?”** otherwise,
- Click **“Main Menu.”**

It is the filer’s responsibility to check the acceptability of submitted files. If an email is not received within five (5) business days or an email is received and it indicates the file is bad, log back into the FIRE system and click on “CHECK FILE STATUS” to view the results of the file(s).

.10 Checking the FILE STATUS

If the correct email address was provided on the “Verify Your Filing Information” screen when the file was sent, an email will be sent regarding the FILE STATUS. If the results in the email indicate “Good, not Released” and the “Count of Payees” is correct, the filer is finished with this file. If the email indicates any other results, follow the instructions below.

At the Main Menu:

- Click **“Check File Status”**
- Enter the **TCC**
- Enter the **TIN**
- Click **“Search”**

If the results on http://fire.irs.gov indicate:

“Good, Not Released” — If the “Count of Payees” is correct, the filer is finished with this file. The file will automatically be released after ten calendar days unless the filer contacts IRS within this timeframe.

“Good, Released” — The file has been released to our mainline processing.

“Bad” — The file has errors. Click on the filename to view the error message(s), fix the errors, and resubmit the file timely as a “replacement”.

“Not yet processed” — The file has been received, but results are not available. Please check back in a few days.

When finished

- Click **“Log Out”**
- Click **“Close Web Browser”**

Sec. 8. Common Problems and Questions Associated with Electronic Filing

.01 The following are the major errors associated with electronic filing:

COMMON **NON-FORMAT ERRORS**

1. SPAM filters are not set to receive email from fire@irs.gov and irs.e-helpmail@irs.gov.

To receive emails concerning files, processing results, reminders and notices, set the SPAM filter to receive email from fire@irs.gov and irs.e-helpmail@irs.gov.

2. Incorrect email address provided.

When the “Verify Your Filing Information” screen is displayed, make sure the correct email address is displayed. If not, please update with the correct email address.

3. Transmitter does not check the FIRE system to determine file acceptability.

Generally, the results of file transfers are posted to the FIRE system within five business days. If the correct email address was provided on the “Verify Your Filing Information” screen when the file was sent, an email will be sent regarding the FILE STATUS. If the results in the email indicate “Good, Not Released” and the “Count of Payees” is correct, the filer is finished with this file. If any other results are received, follow the instructions in the “Check File Status” option. If the file contains errors, get an online listing of the errors. If the file status is good, but the file should not be processed, filers should contact IRS within ten calendar days from the transmission of the file.

4. Replacement file is not submitted timely.

If a file is bad, correct the file and resubmit timely as a replacement.

5. Transmitter compresses several files into one.

Only compress one file at a time. For example, if there are ten uncompressed files to send, compress each file separately and send ten separate compressed files.

6. Transmitter sends an original file that is good, and then sends a correction file for the entire file even though there are only a few changes.

The correction file, containing the proper coding, should only contain the records requiring correction, not the entire file.

7. File is formatted as EBCDIC.

All files submitted electronically must be in standard ASCII code. All alpha characters must be uppercase.

8. Transmitter has one TCC, but is filing for multiple companies, which TIN should be used when logging into the FIRE system to send a file?

When sending the file electronically, enter the TIN of the company assigned to the TCC. The uploaded file should contain the TINs for the businesses that made payments that are subject to reporting on information returns. The payer TIN is the information that will be passed forward.

9. Transmitter sent the wrong file, what should be done?

Call IRS at 1–866–455–7438. IRS may be able to stop the file before it has been processed.

10. Transmitter sends a file and "CHECK FILE STATUS" indicates that the file is good, but the transmitter wants to send another file containing the same information.

Once a file has been transmitted, a replacement file cannot be sent unless the "CHECK FILE STATUS" indicates the file is bad (five business days after the file was transmitted). If a file should not be processed, contact IRS at 1–866–455–7438 to see if the processing can be stopped.

Part C. Filing Specifications and Record Layout

.01 If the file does not meet these specifications, the IRS will request a replacement file. Filers are encouraged to submit a test prior to submitting the actual file. Contact IRS at 1–866–455–7438 for further information.

.02 Do not use decimal points (.) to indicate dollars and cents. Payment Amount Fields must be all numeric characters. If the field is not used, fill with zeros (0).

Note: The only allowable characters in the name and address fields are alphas, numerics, and blanks. Punctuation marks such as periods, hyphens, ampersands, slashes, and commas are not allowed and will cause the file to be rejected. For example, O'Hurley's Bar & Grill, 210 N. Queen St., Suite #300 must be entered as OHurleys Bar Grill 210 N Queen St Suite 300.

Sec. 1. Record Format

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
1	Establishment Type	1	**Required.** This number identifies the kind of establishment. Enter the number which describes the type of establishment, as shown below: **Indicator** — **Usage** 1 — An establishment that serves evening meals only (with or without alcoholic beverages) 2 — An establishment that serves evening meals and other meals (with or without alcoholic beverages) 3 — An establishment that serves only meals other than evening meals (with or without alcoholic beverages) 4 — An establishment that serves food, if at all, only as an incidental part of the business of serving alcoholic beverages.
2–6	Establishment Serial Numbers	5	**Required.** These five-digit serial numbers are for identifying individual establishments of an employer reporting under the same EIN. The employer will assign a unique number to each establishment. Numeric characters only.
7–46	Establishment Name	40	**Required.** Enter the name of the establishment. Left- justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.

FORM 8027 RECORD FORMAT			
Field Position	**Field Title**	**Length**	**Description and Remarks**
47–86	Establishment Street Address	40	**Required.** Enter the mailing address of the establishment. The street address should include the number, street, apartment, or suite number (use a PO Box only if mail is not delivered to a street address). Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
87–111	Establishment City	25	**Required.** Enter the city, town, or post office. Left-justify and blank fill. Allowable characters are alphas, numerics, and blanks.
112–113	Establishment State	2	**Required.** Enter the state code from the state abbreviations table in Part A, Sec. 7.
114–122	Establishment ZIP Code	9	**Required.** Enter the complete nine-digit zip code of the establishment. If using a five-digit ZIP Code, left-justify the five-digit ZIP Code and fill the remaining four positions with blanks.
123–131	Employer Identification Number	9	**Required.** Enter the nine-digit number assigned to the employer by the IRS. Do not enter hyphens, alphas, all 9s or all zeros.
132–171	Employer Name	40	**Required.** Enter the name of the employer as it appears on Form 941. Any extraneous information must be deleted. Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics and blanks.
172–211	Employer Street Address	40	**Required.** Enter the mailing address of the employer. The street address should include the number, street, apartment, or suite number (use a P O Box only if mail is not delivered to a street address). Left-justify information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
212–236	Employer City	25	**Required.** Enter the city, town, or post office. Left-justify the information and fill unused positions with blanks. Allowable characters are alphas, numerics, and blanks.
237–238	Employer State	2	**Required.** Enter the state code from the state abbreviations table in Part A, Sec. 7.
239–247	Employer ZIP Code	9	**Required.** Enter the complete nine-digit zip code of the employer. If using a five-digit zip code, left-justify the five-digit zip code and fill the remaining four positions with blanks.
NOTE: The zip code must be nine numeric characters or five numeric characters and four blanks. Do not enter the dash.			
248–259	Charged Tips	12	**Required.** Enter the total amount of tips that are shown on charge receipts for the calendar year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
260–271	Charged Receipts	12	**Required.** Enter the total sales for the calendar year other than carry-out sales or sales with an added service charge of ten percent or more, that are on charge receipts with a charged tip shown. This includes credit card charges, other credit arrangements, and charges to a hotel room unless the employer's normal accounting practice consistently excludes charges to a hotel room. Do not include any state or local taxes in the amount reported. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter all zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.

FORM 8027 RECORD FORMAT			
Field Position	**Field Title**	**Length**	**Description and Remarks**
272–283	Service Charge Less Than 10 Percent	12	**Required.** Enter the total amount of service charges less than 10 percent added to customers' bills and distributed to your employees for the calendar year. In general, service charges added to the bill are not tips since the customer does not have a choice. These service charges are treated as wages and are included on Form W-2. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
284–295	Indirect Tips Reported	12	**Required.** Enter the total amount of tips reported by indirectly tipped employees (e.g., bussers, service bartenders, cooks) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. For example: Do not include tips received by employees in December 2011, but not reported until January 2012. Include tips received by employees in December 2012, but not reported until January 2013. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
296–307	Direct Tips Reported	12	**Required.** Enter the total amount of tips reported by directly tipped employees (e.g., servers, bartenders) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. For example: Do not include tips received by employees in December 2011, but not reported until January 2012. Include tips received by employees in December 2012, but not reported until January 2013. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
308–319	Total Tips Reported	12	**Required.** Enter the total amount of tips reported by all employees (both indirectly tipped and directly tipped) for the calendar year. Do not include tips received in December of the prior tax year but not reported until January. Include tips received in December of the tax year being reported, but not reported until January of the subsequent year. For example: Do not include tips received by employees in December 2011, but not reported until January 2012. Include tips received by employees in December 2012, but not reported until January 2013. The amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify information and fill unused positions with zeros. If this field is not utilized, enter zeros. Numeric characters only. Do not enter decimal points, dollar signs, or commas.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
320–331	Gross Receipts	12	**Required.** Enter the total gross receipts from the provision of food and/or beverages for this establishment for the calendar year. Do not include receipts for carryout sales or sales with an added service charge of 10 percent or more. Do not include in gross receipts charged tips (field positions 248–259) shown on charge receipts unless you have reduced the cash sales amount because you have paid cash to tipped employees for tips they earned that were charged. Do not include state or local taxes in gross receipts. If you do not charge separately for food or beverages along with other services (such as a package deal for food and lodging), make a good faith estimate of the gross receipts attributable to the food or beverages. This estimate must reflect the cost of providing the food or beverages plus a reasonable profit factor. Include the retail value of complimentary food or beverages served to customers if tipping for them is customary and they are provided in connection with an activity engaged for profit whose receipts would not be included as gross receipts from the provision of food or beverages (e.g., complimentary drinks served to customers at a gambling casino). Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
332–343	Tip Percentage Rate Times Gross Receipts	12	**Required.** Enter the amount determined by multiplying Gross Receipts for the year (field positions 320–331) by the Tip Percentage Rate (field positions 344–347). For example: Value of Gross Receipts =000045678900 Tip Percentage Rate =0800 multiply $456789.00 by .0800 =$36543.12 enter 000003654312 If tips are allocated using other than the calendar year, enter zeros; this may occur if you allocated tips based on the time period for which wages were paid or allocated on a quarterly basis. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
344–347	Tip Percentage Rate	4	**Required.** Enter 8 percent (0800) unless a lower rate has been granted by the IRS. The determination letter must follow the electronic submission. See Part A, Sec. 4.06 for details. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
348–359	Allocated Tips	12	**Required.** If the Tip Percentage Rate times Gross Receipts (field positions 332–343) is greater than Total Tips Reported (field positions 308–319), the difference becomes Allocated Tips. Otherwise, enter all zeros. If tips are allocated using other than the calendar year, enter the amount of allocated tips from your records. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.

FORM 8027 RECORD FORMAT			
Field Position	**Field Title**	**Length**	**Description and Remarks**
360	Allocation Method	1	Required. Use the following list to enter the allocation method used if Allocated Tips (field positions 348–359) are greater than zero: **<u>Indicator</u>** — **<u>Usage</u>** 0 — allocated tips are equal to zero 1 — allocation based on hours worked 2 — allocation based on gross receipts 3 — allocation based on a good-faith agreement The good-faith agreement must follow the electronic submission. See Part A, Sec. 4.05 for details.
361–364	Number of Directly Tipped Employees	4	**Required.** Enter the total number (must be greater than zero) of directly tipped employees employed by the establishment at any time during the calendar year. Right-justify information and fill unused positions with zeros. Numeric characters only.
365–369	Transmitter Control Code (TCC)	5	**Required.** Enter the five-digit Transmitter Control Code assigned by the IRS.
370	Corrected 8027 Indicator	1	**Required.** Enter blank for an original return. Enter "G" for a corrected return. A corrected return must be a complete new return replacing the original return.
371	Final Return Indicator	1	**Required.** Enter the appropriate code: **<u>Code</u>** — **<u>Usage</u>** F — This is the last time the employer will file Form 8027 N — This is not the last time the employer will file Form 8027 Do not enter a blank.
372	Charge Card Indicator	1	**Required.** Enter the appropriate code: **<u>Code</u>** — **<u>Usage</u>** 1 — Your establishment accepts credit cards, debit cards or other charges. 2 — Your establishment does not accept credit cards, debit cards or other charges.
373–374	Blank	2	Enter blanks.
375–378	Tax Year	4	**Required.** Enter the four-digit tax year.
379	Prior Year Indicator	1	**Required.** Enter a "P" only if reporting prior year data; otherwise, enter a blank.
380	Test File Indicator	1	**Required for test files only.** Enter "T" if this is a test file; otherwise, enter a blank.
381–410	Reserved	30	Enter blanks.
411–418	Record Sequence Number	8	**Required.** Enter the number of the record as it appears within the file. The first record in the file will be "1" and each record, thereafter, must be incremental by one in ascending numerical sequence, i.e. 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the first record in the file would appear as "00000001", followed by "00000002", "00000003" and so on until the final record of the file.
419–420	Blank	2	Enter blanks or CR/LF characters.

Sec. 2. Form 8027— Record Layout

Establishment Type	Establishment Serial Numbers	Establishment Name	Establishment Street Address	Establishment City
1	2–6	7–46	47–86	87–111

Establishment State	Establishment ZIP Code	Employer Identification Number	Employer Name	Employer Street Address
112–113	114–122	123–131	132–171	172–211

Employer City	Employer State	Employer ZIP Code	Charged Tips	Charged Receipts
212–236	237–238	239–247	248–259	260–271

Service Charge Less Than 10 Percent	Indirect Tips Reported	Direct Tips Reported	Total Tips Reported	Gross Receipts
272–283	284–295	296–307	308–319	320–331

Tip Percentage Rate Times Gross Receipts	Tip Percentage Rate	Allocated Tips	Allocation Method	Number of Directly Tipped Employees
332–343	344–347	348–359	360	361–364

Transmitter Control Code (TCC)	Corrected 8027 Indicator	Final Return Indicator	Charge Card Indicator	Blank
365–369	370	371	372	373–374

Tax Year	Prior Year Indicator	Test File Indicator	Reserved	Record Sequence Number
375–378	379	380	381–410	411–418

Blank or CR/LF
419–420

Part D. Extensions of Time

Sec. 1. General — Extensions

.01 An extension of time to file may be requested for Forms 1042-S, 1097, 1098, 1099, 3921, 3922, 5498, 8027, W-2G, and W-2 series.

Note: The IRS encourages the payer/transmitter community to utilize the online fill-in form in lieu of the paper Form 8809. Requests for more than one payer must be filed through the Filing Information Returns Electronically (FIRE) system using the Fill-in option. A TCC is not required.

.02 The Fill-in Form 8809 may be completed online via the FIRE System. (See Part B, Sec. 7, for instructions on connecting to the FIRE System.) At the Main Menu, click "Extension of Time Request" and then click "Fill-in Extension Form". This option is only used to request an automatic 30-day extension. Extension requests completed online via the FIRE System receive an instant response if completed properly and timely. If you are requesting an additional extension, you must submit a paper Form 8809. Requests for an additional extension of time to file information returns are not automatically granted. Requests for additional time are granted only in cases of extreme hardship or catastrophic event. The IRS will only send a letter of explanation approving or denying your additional extension request. (Refer to .11 of this Section.)

.03 A paper Form 8809, Application for Extension of Time to File Information Returns, may be submitted to the IRS at the address listed below. This form may be used to request an extension of time to file information returns submitted on paper. A signature is not required when requesting an automatic 30-day extension. Form 8809 may be obtained by calling 1–800–TAX–Form (1–800–829–3676). The form is also available at IRS.gov. These requests must be sent using the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

Note: Due to the large volume of mail received by the IRS and the time factor involved in processing Extension of Time (EOT) requests, it is imperative that the attention line be present on all envelopes or packages containing Form 8809.

.04 Requests for extensions of time to file postmarked by the United States Postal Service on or before the due date of the returns, and delivered by United States mail to the IRS after the due date, are treated as timely under the "timely mailing as timely filing" rule. A similar rule applies to designated private delivery services (PDSs). Notice 97–26, 1997–17 I.R.B. 6, provides rules for determining the date that is treated as the postmark date. For items delivered by a non-designated Private Delivery Service (PDS), the actual date of receipt by the IRS will be used as the filing date. For items delivered by a designated PDS, but through a type of service not designated in Notice 2004–83, 2004–52 I.R.B. 1030 the actual date of receipt by the IRS will be used as the filing date. The timely mailing rule also applies to furnishing statements to recipients and participants.

.05 To be considered, an extension request must be postmarked, transmitted or completed online by the due date of the returns; otherwise, the request will be denied. (See Part A, Sec. 4, for due dates). If requesting an extension of time to file several types of forms, use one Form 8809; however, Form 8809 or an extension file must be submitted no later than the earliest due date. For example, if requesting an extension of time to file both Forms 1099-INT and 5498, submit Form 8809 on or before February 28.

.06 As soon as it is apparent that a 30-day extension of time to file is needed, an extension request should be submitted. The IRS does not begin processing extension requests until January. It may take up to 30 days for the IRS to respond to a paper extension request. Extensions completed online via the FIRE System receive instant results.

.07 Under certain circumstances, a request for an extension of time may be denied. When a denial letter is received, any additional or necessary information must be resubmitted within 20 calendar days.

.08 Requesting an extension of time for multiple payers should be done by completing the online fill-in form via the FIRE System. A separate Form 8809 must be completed online for each payer.

.09 Transmitters requesting an extension of time via an electronic file (see Sec. 3 for the record layout) will receive the file status results online.

.10 If an extension request is approved, the approval notification should be kept on file. When filing Form 8027 on paper only, attach a copy of the approval letter. If an approval letter has not been received, attach a copy of the timely filed Form 8809.

.11 If an additional extension of time is needed, a Form 8809 and/or extension file must be sent by the initial extended due date. Check line 3 on the form to indicate that an additional extension is being requested. Failure to properly complete and sign Form 8809 may cause delays in processing the request or result in a denial. Carefully read and follow the instructions on the back of Form 8809. A second 30-day extension will be approved only in cases of extreme hardship or catastrophic event. Be sure to include the reason an additional extension is needed. If requesting a second 30-day extension of time, submit the information return files as soon as prepared. Do not wait for the IRS's response to your second extension request.

Sec. 2. Specifications for Filing Extensions of Time Electronically

.01 The specifications in Sec. 3 include the required 200-byte record layout for extensions of time to file requests submitted electronically. Also included are the instructions for the information that is to be entered in the record. Filers are advised to read this section in its entirety to ensure proper filing.

.02 If a filer does not have an IRS assigned Transmitter Control Code (TCC), Form 4419, Application for Filing Information Returns Electronically (FIRE) **must** be submitted to obtain a TCC. This number must be used to submit an extension request electronically. (See Part A, Sec. 6.)

.03 If you are requesting an additional extension, you must fax a signed Form 8809 the same day as the transmission. Be sure to include the reason an additional extension is needed.

.04 Do not submit tax year *2012* extension requests filed electronically before *January 3, 2013*.

.05 *File processing results will be sent via email if a valid email address was provided on the "Verify Your Filing Information" screen. If you are using email filtering software, configure software to accept email from fire@irs.gov and irs.e-helpmail@irs.gov.*

Sec. 3. Record Layout — Extension of Time

.01 Positions 6 through 188 of the following record should contain information about the payer for whom the extension of time to file is being requested. Do not enter transmitter information in these fields. Only one TCC may be present in a file.

Record Layout for Extension of Time

Field Position	Field Title	Length	Description and Remarks
1–5	Transmitter Control Code	5	**Required.** Enter the five-character alphanumeric Transmitter Control Code (TCC) issued by the IRS. Only one TCC per file is acceptable.
6–14	Payer TIN	9	**Required.** Enter the valid nine-digit EIN/SSN assigned to the payer. Do not enter blanks, hyphens or alpha characters. All zeros, ones, twos, etc., will have the effect of an incorrect TIN. For foreign entities that are not required to have a TIN, this field may be blank; however, the Foreign Entity Indicator, position 187, **must** be set to "X."
15–54	Payer Name	40	**Required.** Enter the name of the payer whose TIN appears in positions 6–14. Left-justify information and fill unused positions with blanks.
55–94	Second Payer Name	40	**Required.** If additional space is needed, this field may be used to continue name line information (e.g., c/o First National Bank); otherwise, enter blanks.
95–134	Payer Address	40	**Required.** Enter the payer's address. The street address should include the number, street, apartment, or suite number (or PO Box if mail is not delivered to a street address).
135–174	Payer City	40	**Required.** Enter the payer's city, town, or post office.
175–176	Payer State	2	**Required.** Enter the payer's valid U.S. Postal Service state abbreviation. (Refer to Part A, Sec. 7)
177–185	Payer ZIP Code	9	**Required.** Enter the payer's zip code. If using a five-digit zip code, left-justify information and fill unused positions with blanks.
186	Document Indicator **(See Note)**	1	**Required.** From the table below, enter the appropriate document code that indicates the form for which an extension of time is being requested **Code** — **Document** 1 — W-2 5 — 8027
NOTE: Do not enter any other values in this field. Submit a separate record for each document. For example, when requesting an extension for Form 8027 and Form W-2 for the same payer/employer, submit one record with "5" coded in this field and another record with "1" coded in this field.			
187	Foreign Entity Indicator	1	Enter "X" if the payer is a foreign entity.
188	Recipient Request Indicator	1	Enter "X" if the extension request is to furnish statements to the recipients of the information returns.
Note: A separate file is required for this type of extension request. A file must either contain all blanks or all Xs in this field.			
189–198	Blank	10	Enter blanks.
199–200	Blank	2	Enter blanks or carriage return/line feed (CR/LF) characters.

Extension of Time Record Layout

Transmitter Control Code	Payer TIN	Payer Name	Second Payer Name	Payer Address	Payer City
1–5	6–14	15–54	55–94	95–134	135–174

Payer State	Payer Zip Code	Document Indicator	Foreign Entity Indicator	Recipient Request Indicator	Blank
175–176	177–185	186	187	188	189–198

Blank or CR/LF
199–200

Sec. 4. Extension of Time for Recipient Copies of Information Returns

.01 Request an extension of time to furnish the statements to recipients of Forms W-2 by submitting a letter to the IRS at the address listed in Part D, Sec. 1.03. The letter should contain the following information:

(a) Payer name
(b) TIN
(c) Address
(d) Type of return
(e) Specify that the extension request is to provide statements to recipients
(f) Reason for the delay
(g) Signature of payer or duly authorized person

.02 Requests for an extension of time to furnish statements to recipients of Forms W-2 series are not automatically approved. If approved, an extension will allow a **maximum** of 30 additional days from the due date. The request must be postmarked no later than the date the statements are due to the recipients.

.03 Generally, only the payer may sign the letter requesting the extension for recipient copies. If a transmitter has a contractual agreement with a payer to submit extension requests on the payer's behalf, the transmitter should state so in the letter requesting the extension.

.04 Requests for extensions of time to file recipient copies for more than 10 payers are required to be submitted electronically. (See Sec. 3, for the record layout). When requesting extensions of time for recipient copies, a signed letter must be faxed to IRB by the transmitter the same day as the transmission. Be sure to include the reason an extension for the recipient copies is needed.

.05 Transmitters submitting an extension of time for recipient copies via an electronic file should not submit a list of payer names and TINs with the letter since this information is included in the electronic file.

.06 The online fill-in Form 8809 extension option cannot be used to request an extension to furnish statements to recipients.

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 179D, 1.179D, 381, 1.381(c)(4)–1, 1.381(c)(5)–1, 446, 1.446–1.)

Rev. Proc. 2012–39

SECTION 1. PURPOSE

This revenue procedure clarifies and modifies (i) Rev. Proc. 2011–14, 2011–4 I.R.B. 330; and (ii) Rev. Proc. 97–27, 1997–1 C.B. 680, as amplified and modified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, as modified by Rev. Proc. 2007–67, 2007–2 C.B. 1072, as clarified and modified by Rev. Proc. 2009–39, 2009–38 I.R.B. 371, and as clarified and modified by Rev. Proc. 2011–14. It modifies certain rules applicable to a taxpayer that engages in a corporate reorganization or tax-free liquidation described in § 381(a) of the Internal Revenue Code that occurs on or after August 31, 2011. It also modifies section 3.09 of the APPENDIX of Rev. Proc. 2011–14 regarding a change to the method of accounting described in Rev. Proc. 2011–43, 2011–37 I.R.B. 326, for taxpayers in the business of transporting, delivering, or selling electricity. Finally, it clarifies and modifies section 8.04 of the APPENDIX of Rev. Proc. 2011–14 regarding a change in method of accounting for amounts paid or incurred for the installation of energy efficient commercial building property under § 179D.

SECTION 2. BACKGROUND

.01 Rev. Proc. 97–27 provides the general procedures for a taxpayer to obtain non-automatic consent from the Commissioner of Internal Revenue (Commissioner) to change a method of accounting under § 446(e).

.02 Rev. Proc. 2011–14, issued in January 2011, provides the procedures for a taxpayer to obtain automatic consent from the Commissioner for a change in method of accounting that is described in the APPENDIX of Rev. Proc. 2011–14. A taxpayer complying with all the applicable provisions of Rev. Proc. 2011–14 obtains the consent of the Commissioner to change its method of accounting under § 446(e).

.03 Section 4.02 of Rev. Proc. 2011–14 describes seven scope limitations that preclude a taxpayer from obtaining automatic consent to change a method of accounting under Rev. Proc. 2011–14. Except to the extent the scope limitations are waived for a particular change in the APPENDIX of Rev. Proc. 2011–14, these scope limitations apply even when the change in method of accounting is described in the APPENDIX of Rev. Proc. 2011–14. Two of these scope limitations preclude a taxpayer from using the automatic consent procedures in Rev. Proc. 2011–14 to change its method of accounting for a taxable year (year of change) in which (i) it engages in a transaction to which § 381(a) applies (§ 381(a) transaction), or (ii) it ceases to engage in the trade or business to which the change in method of accounting relates or terminates its existence. *See* sections 4.02(4) and (5) of Rev. Proc. 2011–14. A taxpayer that is precluded from using the automatic consent procedures in Rev. Proc. 2011–14 to change its method of accounting may request permission to change the method of accounting using the provisions of Rev. Proc. 97–27 if the taxpayer is within the scope of Rev. Proc. 97–27. *See* section 4.03 of Rev. Proc. 2011–14.

.04 Section 6.03 of Rev. Proc. 2011–14 and section 6.01 of Rev. Proc. 97–27 provide the rules for when a taxpayer under examination may use the automatic change procedures in Rev. Proc. 2011–14 or the non-automatic change procedures in Rev. Proc. 97–27, respectively, to request consent to change a method of accounting.

.05 On August 1, 2011, the Treasury Department and the Internal Revenue Service (Service) issued final regulations under §§ 381(c)(4) and 381(c)(5) in T.D. 9534, 76 Fed. Reg. 45673 (2011). These regulations provide guidance regarding the method of accounting or combination of methods of accounting an acquiring corporation must use following a distribution or transfer to which § 381(a) and § 381(c)(4) or § 381(c)(5) apply and how to implement any associated change in method of accounting. These regulations permit any party to a § 381(a) transaction to request permission from the Commissioner under § 446(e) to change a method of accounting for the taxable year in which the transaction occurs or is expected to occur. However, the regulations state that, for the taxable year that includes the date of the § 381(a) transaction, the Commissioner will not grant permission to change a method of accounting for any separate and distinct trade or business of either party if the acquiring corporation will not operate that trade or business as a separate and distinct trade or business after the date of the § 381(a) transaction, unless the requested method is the method that the acquiring corporation must use for the transferred or distributed items of that trade or business after the date of distribution or transfer. See §§ 1.381(c)(4)–1(a)(5) and 1.381(c)(5)–1(a)(5). Sections 1.381(c)(4)–1(d)(2) and 1.381(c)(5)–1(d)(2) provide the procedures for requesting permission under § 446(e) to change a method of accounting for a year of change in which a § 381(a) transaction occurs or is expected to occur. Those procedures state, in part, that the scope limitation relating to the final year of a trade or business will not apply to a taxpayer that changes its method of accounting in the final year of a trade or business that is terminated as the result of a § 381(a) transaction. The regulations issued under §§ 1.381(c)(4) and 1.381(c)(5) in T.D. 9534 apply to corporate reorganizations or tax-free liquidations described in § 381(a) that occur on or after August 31, 2011.

.06 The Service has decided to waive the scope limitation in Rev. Proc. 2011–14 that precludes a taxpayer from making an automatic accounting method change for a taxable year in which the taxpayer engages in a § 381(a) transaction. This revenue procedure modifies section 4.02(4) of Rev. Proc. 2011–14 to permit taxpayers to make otherwise qualifying automatic accounting method changes in the year of the § 381(a) transaction. This revenue procedure also modifies both Rev. Proc. 2011–14 and Rev. Proc. 97–27 to waive the scope limitation that precludes taxpayers who are under examination from seeking consent to change to an accounting method other than the principal or carryover method.

.07 Section 3.09 of the APPENDIX of Rev. Proc. 2011–14 allows taxpayers in the business of transporting, delivering, or selling electricity to change their method of accounting to the safe harbor method of accounting described in Rev. Proc. 2011–43. The scope limitations of section 4.02 of Rev. Proc. 2011–14 do not apply to an electric transmission or distribution company that changes to the method of accounting provided in Rev. Proc. 2011–43 for its first or second taxable year ending after December 30, 2010.

.08 The Service is aware that many electric transmission or distribution companies have not had time to change their method of accounting to the safe harbor method of accounting described in Rev. Proc. 2011–43. Accordingly, this revenue procedure modifies section 3.09 of the APPENDIX of Rev. Proc. 2011–14 to extend the waiver of scope limitations to the third taxable year ending after December 30, 2010.

.09 Section 179D(a) allows a deduction to a taxpayer for part or all of the cost of energy efficient commercial building property that the taxpayer places in service in a taxable year. The amount of the deduction may not exceed the excess (if any) of (i) the product of $1.80 and the square footage of the building, over (ii) the aggregate amount of the § 179D deductions allowed with respect to the building for all prior taxable years. If the energy efficient commercial building property is installed on or in property owned by a Federal, State, or local government or political subdivision thereof, § 179D permits the owner to allocate this deduction to the designer of the commercial building property. In Notice 2008–40, the Service provided procedures for owners of government buildings to allocate the § 179D deduction to the designer.

.10 Section 8.04 of the APPENDIX of Rev. Proc. 2011–14 allows taxpayers to change their method of accounting to deduct under § 179D amounts paid or incurred for the installation of energy efficient commercial building property, as defined in § 179D(c)(1). Section 8.04(4) of the APPENDIX requires a taxpayer making this change to attach a certification to demonstrate the energy efficient commercial building property has achieved the reduction in energy and power costs necessary to qualify for the § 179D deduction. The additional filing requirement also contains a provision that, in the case of a government-owned building for which a designer has been allocated a deduction under § 179D, the designer becomes the taxpayer for purposes of the deduction and must attach a certification and an allocation from the owner of the building to the designer.

.11 Some taxpayers have interpreted section 8.04(4) of the APPENDIX of Rev. Proc. 2011–14 to mean that designers may file a Form 3115 for a change in method of accounting and make a § 481(a) adjustment for a § 179D deduction allocated to the designer. However, a designer who takes a § 179D deduction is making a permanent change in its income because, unlike the owner of the property, the designer is not otherwise entitled to deduct the amount of the § 179D deduction by another method, for example, through depreciation. Taxpayers may not use a change in method of accounting to make a permanent change in income. Accordingly, this revenue procedure clarifies and modifies section 8.04 of the APPENDIX of Rev. Proc. 2011–14 to make clear that designers may not use the automatic change in method of accounting provisions of Rev. Proc. 2011–14 for § 179D deductions that are allocated to them. Designers allocated a § 179D deduction for commercial building property placed in service in a prior taxable year may file an amended return for the taxable year in which the property was placed in service (if that taxable year is open) to claim such § 179D deduction. This revenue procedure also modifies the filing requirements in section 8.04 of the APPENDIX for the duplicate copy of the Form 3115.

SECTION 3. CHANGE IN METHOD OF ACCOUNTING

.01 *Modification of Rev. Proc. 2011–14.*

(1) *Modification of sections 4.02(1), (4) and (5).* Sections 4.02(1), 4.02(4) and 4.02(5) of Rev. Proc. 2011–14 are modified to read as follows:

(1) *Under examination.* If, on the date the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) would otherwise file a copy of the application with the national office, or if applicable, with the Ogden office, (*see* section 6.02(3) of this revenue procedure), the taxpayer is under examination (*see* section 3.08 of this revenue procedure), except as provided in sections 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), 6.03(6) (issue pending or change to use other than the principal or carryover method), 6.04 (issue under consideration by an appeals office), and 6.05 (issue under consideration by a federal court) of this revenue procedure.

(4) *Section 381(a) transaction.* Except as otherwise provided in this section 4.02(4), if the taxpayer engages in a transaction to which § 381(a) applies (§ 381(a) transaction) within the proposed taxable year of change (determined without regard to any potential closing of the year under § 381(b)(1)). All references to the regulations in sections 4.02(4)(a)(i) and 4.02(4)(a)(ii) refer to the regulations under §§ 381(c)(4) and 381(c)(5) that were in effect prior to August 31, 2011, the effective date of T.D. 9534. All references to the regulations in section 4.02(4)(b) refer to the regulations under §§ 381(c)(4) and 381(c)(5) that are in effect as of August 31, 2011.

(a) *Section 381(a) transaction occurring before August 31, 2011.*

(i) *No differences in methods.* An acquiring corporation in a § 381(a) transaction that occurred before August 31, 2011, may change its method of accounting pursuant to this revenue procedure if the acquiring corporation would be permitted to continue to use its prior method of accounting under the rules of §§ 1.381(c)(4)–1(b)(1) and (3)(i) (taking into account the third sentence of § 1.381(c)(4)–1(b)(4) relating to no prior method established by a party to the transaction) or §§ 1.381(c)(5)–1(b)(1) and (3)(i) (taking into account the second sentence of § 1.381(c)(5)–1(b)(4)(i) relating to no prior inventory method established by a party to the transaction) because all of the parties to the transaction used the same method of accounting on the date of distribution or transfer. The change pursuant to this revenue procedure is ignored for purposes of determining whether on the date of distribution or transfer the parties to the transaction used the same methods of accounting under § 1.381(c)(4)–1(b) or § 1.381(c)(5)–1(b), and thus §§ 1.381(c)(4)–1(b)(3)(ii) and (c) and §§ 1.381(c)(5)–1(b)(3)(ii) and (c) will not apply.

(ii) *Separate trades or businesses.* An acquiring corporation in a § 381(a) transaction that occurred before August 31, 2011, may change pursuant to this revenue procedure a method of accounting used by a trade or business operated by such corporation if the trade or business would be permitted to continue to use its prior method of accounting under the rules of § 1.381(c)(4)–1(b)(2) or § 1.381(c)(5)–1(b)(2). The change pursuant to this revenue procedure is ignored for purposes of determining whether on the date of distribution or transfer the parties to the transaction used the same methods of accounting under § 1.381(c)(4)–1(b) or § 1.381(c)(5)–1(b), and, thus §§ 1.381(c)(4)–1(b)(3) and (c) and §§ 1.381(c)(5)–1(b)(3) and (c) will not apply.

(b) *Section 381(a) transactions occurring on or after August 31, 2011.* Any party to a § 381(a) transaction that occurs on or after August 31, 2011, may change its method of accounting for the taxable year in which the § 381(a) transaction occurs pursuant to this revenue procedure if the taxpayer is requesting a change in method of accounting described in § 1.381(c)(4)–1(a)(4) or (5) or § 1.381(c)(5)–1(a)(4) or (5).

(5) *Final year of trade or business.* Except as otherwise provided in this section 4.02(5), if, in the proposed year of change, a taxpayer requesting a change in method of accounting ceases to engage in the trade or business to which the change in method of accounting relates, as described in section 5.04(3)(c) of this revenue procedure, or terminates its existence. For purposes

of this section 4.02(5), a taxpayer is treated as ceasing to engage in the trade or business or terminating its existence without regard to whether the taxpayer's change in method of accounting request would result in either a positive or negative § 481(a) adjustment or be made on a cut-off basis.

This section 4.02(5) does not apply to a taxpayer that changes its method of accounting in the final year of its trade or business that is terminated as the result of a transaction to which § 381(a) applies that occurs on or after August 31, 2011.

(2) *Modification of sections 6.03(1) and 6.03(6).* Sections 6.03(1) and 6.03(6) of Rev. Proc. 2011–14 are modified to read as follows:

(1) *In general.* Except as otherwise provided in the APPENDIX of this revenue procedure (see, for example, section 2.01 of the APPENDIX of this revenue procedure), a taxpayer that is under examination (as provided in section 3.08 of this revenue procedure) may file an application to change a method of accounting under this revenue procedure only if the taxpayer is within the provisions of section 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), 6.03(6) (issue pending or change to use other than the principal or carryover method), 6.04 (issue under consideration by an appeals office), or 6.05 (issue under consideration by a federal court) of this revenue procedure. A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that files an application beyond the time periods provided in the 90-day window and 120-day window is not eligible for the automatic extension of time and will not be granted an extension of time under § 301.9100, except in unusual and compelling circumstances.

(6) *Issue pending or change to use other than the principal or carryover method.*

(a) *Issue pending.* A taxpayer that is under examination with respect to any income tax issue may request to change a method of accounting if the method of accounting to be changed is an issue pending for any taxable year under examination. However, the audit protection provisions of section 7 of this revenue procedure do not apply to a taxpayer changing its method of accounting pursuant to this section 6.03(6)(a). For purposes of this section 6.03(6)(a), an issue is pending for a taxable year under examination if the Service has given the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, any controlling domestic shareholder of a CFC or 10/50 corporation) written notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. This notification by the Service may result from an inquiry by the Joint Committee on Taxation. This notification normally will occur after the Service or the Joint Committee on Taxation has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined. See section 6.02(3)(c) of this revenue procedure for more information regarding the requirement to file a copy of the application with the examining agent.

(b) *Change to use other than the principal or carryover method.* Any party to a transaction to which § 381(a) applies that is under examination with respect to any income tax issue may request to change to a method of accounting described in § 1.381(c)(4)–1(a)(4) or (5) or § 1.381(c)(5)–1(a)(4) or (5) (as in effect as of August 31, 2011) and the APPENDIX of this revenue procedure for the taxable year (year of change) in which the § 381(a) transaction occurs or is expected to occur. However, if, on the date the party (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) files a copy of the application, the method of accounting to be changed is an issue under consideration (*see* section 3.09(1) of this revenue procedure) or an issue the examining agent(s) has placed in suspense, the audit protection provisions of section 7 of this revenue procedure do not apply to the party's change in method of accounting requested pursuant to this section 6.03(6)(b). See section 6.02(3)(c) of this revenue procedure for more information regarding the requirement to file a copy of the application with the examining agent.

(3) *Change to section 3.09 of the APPENDIX, Method of Accounting under Rev. Proc. 2011–43 for taxpayers in the business of transporting, delivering, or selling electricity.* Section 3.09(2) of the APPENDIX of Rev. Proc. 2011–14 is modified to read as follows:

(2) *Waiver of scope limitations.* The scope limitations in section 4.02 of this revenue procedure do not apply to an electric transmission or distribution company that changes to the method of accounting provided in Rev. Proc. 2011–43 for its first, second, or third taxable year ending after December 30, 2010.

(4) *Change to section 8.04 of the APPENDIX, Elective expensing provisions (§ 179D).* Section 8.04 of the APPENDIX of Rev. Proc. 2011–14 is clarified and modified to read as follows:

.04 *Deduction for Energy Efficient Commercial Buildings (§ 179D).*

(1) *Description of change.* This change applies to taxpayers that want to change their method of accounting to deduct under § 179D amounts paid or incurred for the installation of energy efficient commercial building property as defined in § 179D(c)(1). The deduction for energy efficient commercial building property is subject to the limits of § 179D(b) and must be claimed in the taxable year in which the property is placed in service. The basis of the energy efficient commercial building property is reduced by the amount of the § 179D deduction taken and the remaining basis of the energy efficient commercial building property is depreciated over its recovery period.

(2) *Applicability.* This change applies to taxpayers that place in service property for which a deduction is allowed under § 179D(a).

(3) *Inapplicability.* This change does not apply to a designer to whom the owner of a government building allocates the § 179D deduction.

(4) *Manner of making change.* A taxpayer making this change must attach to its Form 3115 a statement with a detailed description of the tax treatment of the property under the taxpayer's present and proposed methods of accounting.

(5) *Certification requirement.* In addition to the statement required by section 8.04(4) of the APPENDIX of this revenue procedure (Rev. Proc. 2011–14), a taxpayer making this change must attach a certification as required by section 4 of Notice 2006–52, 2006–1 C.B. 1175, or section 5 of Notice 2008–40, 2008–1 C.B. 725, to demonstrate the energy efficient commercial building property has achieved the reduction in energy and power costs or in lighting power density

necessary to qualify for the § 179D deduction.

(6) *Ogden copy of Form 3115 required in lieu of national office copy*. A taxpayer changing its method of accounting under section 8.04 of this APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT (Ogden copy), in lieu of filing the national office copy, no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* section 6.02(3)(a)(ii)(B) (providing the general rules) and section 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(7) *No ruling on qualification*. The consent granted under this revenue procedure for this change is not a determination by the Commissioner that the taxpayer qualifies for a deduction under section 179D. The director will ascertain whether the taxpayer qualifies for a deduction under section 179D (including a review of the required certifications).

(8) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change in method of accounting under section 8.04 of this APPENDIX is "152." See section 6.02(4) of this revenue procedure.

(9) *Contact information*. For further information regarding a change under this section, contact Jennifer Bernardini at 202–622–3110 (not a toll-free call).

.02 *Modification of Rev. Proc. 97–27*. Sections 6.01(1) and 6.01(5) of Rev. Proc. 97–27 are modified to read as follows:

(1) *In general*. A taxpayer that is under examination may not file a Form 3115 to request a change in accounting method under this revenue procedure, except as provided in sections 6.01(2) (90-day window), 6.01(3) (120-day window), 6.01(4) (director consent), and 6.01(5) (issue pending or change to use other than the principal or carryover method). A taxpayer that files a Form 3115 beyond the time periods provided in the 90-day window and 120-day window will not be granted an extension of time to file under § 301.9100, except in unusual and compelling circumstances.

(5) *Issue pending or change to use other than the principal or carryover method*.

(a) *Issue pending*. A taxpayer that is under examination with respect to any income tax issue may request to change a method of accounting if the method of accounting to be changed is an issue pending for any taxable year under examination. However, the audit protection provisions of section 9.01 of this revenue procedure do not apply to a taxpayer changing its method of accounting pursuant to this section 6.01(5)(a). For purposes of this section 6.01(5)(a), an issue is pending for a taxable year under examination if the Service has given the taxpayer (or if section 3.02 of Rev. Proc. 2009–39 applies, any controlling domestic shareholder of a CFC or 10/50 corporation) written notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. This notification by the Service may result from an inquiry by the Joint Committee on Taxation. This notification normally will occur after the Service or the Joint Committee on Taxation has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined. The taxpayer requesting to change a method of accounting under this section 6.01(5)(a) must provide a copy of the Form 3115 to the examining agent(s) at the same time it files the original Form 3115 with the national office.

(b) *Change to use other than the principal or carryover method.*

Any party to a transaction to which § 381(a) applies that is under examination with respect to any income tax issue may request to change to a method of accounting described in § 1.381(c)(4)–1(a)(4) or (5) or § 1.381(c)(5)–1(a)(4) or (5) (as in effect as of August 31, 2011) for the taxable year (year of change) in which the § 381(a) transaction occurs or is expected to occur. However, if, on the date the party (or if section 3.02 of Rev. Proc. 2009–39 applies, the designated shareholder) files the Form 3115, the method of accounting to be changed is an issue under consideration (*see* section 3.08 of this revenue procedure) or an issue the examining agent(s) has placed in suspense, the audit protection provisions of section 9.01 of this revenue procedure do not apply to the party's request to change its method of accounting pursuant to this section 6.01(5)(b). The party requesting to change a method of accounting under this section 6.01(5)(b) must provide a copy of the Form 3115 to the examining agent(s) at the same time it files the original Form 3115 with the national office.

SECTION 4. LIMITATION OF CHANGE IN METHOD OF ACCOUNTING

This revenue procedure does not modify, amend, or in any other way alter, any change to the principal method to which § 1.381(c)(4)–1(d)(1) or 1.381(c)(5)–1(d)(1) applies.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–14 is clarified and modified. Rev. Proc. 97–27 is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for Forms 3115 filed on or after September 4, 2012. Further, a taxpayer that, on or after August 31, 2011, engaged in a transaction to which § 381(a) applies within the proposed year of change may choose to apply sections 3.01(1), 3.01(2) and 3.02 of this revenue procedure (modifying sections 4.02(1), 4.02(4), 4.02(5), 6.03(1), and 6.03(6) of Rev. Proc. 2011–14 and sections 6.01(1) and 6.01(5) of Rev. Proc. 97–27) to a Form 3115 filed prior to, and pending with the national office on, September 4, 2012.

DRAFTING INFORMATION

The principal author of this revenue procedure is Cheryl Oseekey, of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Oseekey at (202) 622–4970 (not a toll-free call).

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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