

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017-21
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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. 2017-09, page 1244.

This revenue ruling provides guidance regarding the federal tax treatment of certain transactions referred to as 'north-south' transactions. The guidance describes two north-south transactions: one involving steps that are respected as separate and another involving steps that are integrated. This revenue ruling also removes § 5.02 from Rev. Proc. 2017-3, 2017-1 I.R.B. 130, thereby lifting the prohibition on private letter rulings involving north-south transactions.

Rev. Proc. 2017-36, page 1251.

This revenue procedure provides indexing adjustments for certain provisions under sections 36B and 5000A of the Internal Revenue Code. In particular, it updates the Applicable Percentage Table in § 36B(b)(3)(A)(i) to provide the Applicable Percentage Table for 2018. This table is used to calculate an individual's premium tax credit. This revenue procedure also updates the required contribution percentage in section 36B(c)(2)(C)(i)(II) for plan years beginning after calendar year 2017. The percentage is used to determine whether an individual is eligible for affordable employer-sponsored minimum essential coverage under § 36B.

Rev. Proc. 2017-37, page 1252.

This revenue procedure provides the 2018 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under section 223 of the Internal Revenue Code.

EXCISE TAX

Notice 2017-30, page 1248.

This notice provides 180-day emergency relief for fuel removals from Milwaukee terminals due to the shutdown of the West Shore Pipeline. Once the 180-day emergency relief expires, the notice provides a temporary mechanism for refunds of the

§ 4081(a)(1) tax imposed upon removals of undyed diesel fuel from a Milwaukee terminal when such fuel is transported to and entered into a Green Bay terminal and subsequently removed from that Green Bay terminal as dyed fuel destined for a nontaxable use.

ADMINISTRATIVE

Notice 2017-30, page 1248.

This notice provides 180-day emergency relief for fuel removals from Milwaukee terminals due to the shutdown of the West Shore Pipeline. Once the 180-day emergency relief expires, the notice provides a temporary mechanism for refunds of the § 4081(a)(1) tax imposed upon removals of undyed diesel fuel from a Milwaukee terminal when such fuel is transported to and entered into a Green Bay terminal and subsequently removed from that Green Bay terminal as dyed fuel destined for a nontaxable use.

Rev. Proc. 2017-35, page 1250.

The proposed revenue procedure provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates as defined in section 25(c), with the United States median gross income figure most recently computed by the Department of Housing and Urban Development (HUD). The proposed revenue procedure also provides these issuers with guidance concerning the area median gross income as computed by HUD. Issuers of qualified mortgage bonds (QMB) and mortgage credit certificates (MCC) must use these income figures in determining whether the income limitation placed on the beneficiaries of the mortgages and certificates may be increased because the residences to be financed are located in high housing cost areas. See sections 25(c)(A)(iii)(IV) and 143(f)(5).

The IRS Mission

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

Introduction

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

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

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

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

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

Section 355.—Distribution of Stock and Securities of a Controlled Corporation

IRC § 355: Distribution of Stock and Securities of a Controlled Corporation (Also §§ 301; 351; 361; 368)

Rev. Rul. 2017-09

ISSUES

- (1) If a parent corporation (*P*) transfers property (including property constituting an active trade or business that is transferred for the purpose of meeting the requirements of § 355(b)(1)(A) of the Internal Revenue Code (Code)), to its subsidiary (*D*), and if, pursuant to the same overall plan, this transfer is followed by a distribution by *D* of the stock of its controlled subsidiary (*C*) to *P*, are the transactions treated for federal income tax purposes as an exchange under § 351, followed by a distribution under § 355?
- (2) Is a transfer of money or other property by *C* to *D*, made in pursuance of a plan of reorganization under §§ 368(a)(1)(D) and 355, governed by § 301 or § 361?

FACTS

Situation 1:

P owns all the stock of *D*, which owns all the stock of *C*. The fair market value of the *C* stock is \$100X. *P* has been engaged in Business A for more than 5 years, and *C* has been engaged in Business B for more than 5 years. Business A and Business B each constitutes the active conduct of a trade or business within the meaning of § 355(b). *D* is not engaged in the active conduct of a trade or business, directly or through any member of its separate affiliated group (within the meaning of § 355(b)(3)) other than *C*.

On Date 1, *P* transfers the property and activities constituting Business A, having a fair market value of \$25X, to *D* in exchange for additional shares of *D* stock. On Date 2, pursuant to a dividend declaration,

D transfers all the *C* stock to *P* for a valid corporate business purpose. *D* retains the Business A property and continues the active conduct of Business A after the distribution. The purpose of *P*'s transfer of the property and activities of Business A to *D* is to allow *D* to satisfy the active trade or business requirement of § 355(b)(1)(A).

Situation 2:

P owns all the stock of *D*, which owns all the stock of *C*. *D* has been engaged in Business A for more than 5 years. *C* has been engaged in Business B for more than 5 years. Business A and Business B each constitutes the active conduct of a trade or business within the meaning of § 355(b).

On Date 1, *C* transfers \$15X of money and property having a fair market value of \$10X to *D*, pursuant to a dividend declaration, and *D* retains the money and property. On Date 2, *D* transfers to *C* property having a basis of \$20X and a fair market value of \$100X, and *D* distributes all the *C* stock to *P* in a transaction qualifying as a reorganization under §§ 368(a)(1)(D) and 355. *C* and *D* planned and executed the Date 1 transfer in pursuance of the plan of reorganization.

LAW

Section 301(c)(1) provides that a distribution that is a dividend (as defined in § 316), made by a corporation to a shareholder with respect to its stock, will be includible in the gross income of the shareholder. Section 301(c)(2) provides that the portion of the distribution which is not a dividend will be applied against and reduce the adjusted basis of the stock. Section 301(c)(3) provides that the portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, will be treated as gain from the sale or exchange of property.

Section 311(b) provides in part that, if a corporation distributes appreciated property to a shareholder in a distribution to which § 301 applies, gain (but no loss) will be recognized to the distributing corporation as if it had sold the property to the shareholder at its fair market value.

Section 316 generally defines a dividend as any distribution of property made by a corporation to its shareholders out of its earnings and profits accumulated after February 28, 1913, or out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any other distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Section 351(a) provides that no gain or loss will be recognized when property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in § 368(c)) of the corporation.

Section 355(a)(1) provides that, if certain requirements are met, a corporation may distribute stock and securities of a controlled corporation to its shareholders and security holders without recognition of gain or loss (nonrecognition treatment) or income to the recipient shareholders or security holders.

Section 355(a)(1)(A) provides that, for a distribution to qualify for nonrecognition treatment, the distributing corporation must distribute stock or securities of a corporation it controls (as defined in § 368(c)) immediately before the distribution.

Section 355(a)(1)(D) provides in part that a distribution may qualify for nonrecognition treatment if the distributing corporation distributes an amount of stock in the controlled corporation constituting control within the meaning of § 368(c).

Section 355(b)(1)(A) provides that the distributing corporation and the controlled corporation each must be engaged in the active conduct of a trade or business immediately after the distribution.

Section 361(a) provides that no gain or loss will be recognized to a corporation a party to a reorganization upon exchange of property in pursuance of a plan of reorganization solely for stock or securities in another corporation a party to the reorganization.

Section 361(b) provides that, if § 361(a) would apply to an exchange of assets by a reorganizing corporation but for the fact that the property received in exchange consists not only of stock or securities of the acquiring corporation permitted by § 361(a) to be received without the recognition of gain, but also of other property or money, then (A) if the corporation receiving that other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation will be recognized from the exchange, but (B) if the corporation receiving that other property or money does not distribute it in pursuance of the plan of reorganization, any gain that the corporation realizes on the exchange of its property will be recognized up to the sum of the money and the fair market value of the other property received that is not distributed.

Section 361(c)(2)(A) provides that, if the acquiring corporation distributes property other than qualified property (defined in § 361(c)(2)(B)), and the fair market value of such property exceeds its adjusted basis, then gain will be recognized as if such property were sold to the distributee at its fair market value.

Section 368(a)(1)(D) includes within the definition of “reorganization” a transfer by a corporation of part of its assets to another corporation if immediately after the transfer the transferor is in control of the corporation to which the assets are transferred and the transferor distributes the stock in a transaction that qualifies under § 354, § 355, or § 356.

Section 368(c) defines “control” as ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Section 1001(a) provides that the gain from the sale or other disposition of property will be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss will be the excess of the adjusted basis provided in such section for determining loss over the amount realized. Section 1001(c) provides that except as otherwise provided in subtitle A of the Code, the entire amount of the gain or

loss, determined under § 1001, on the sale or exchange of property will be recognized.

Section 1032(a) provides that no gain or loss will be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

Section 1.1002-1(c) provides, in part, with respect to §§ 351 and 361, that the underlying assumption of these exceptions to the recognition of gain or loss under § 1001 is that the new property is substantially a continuation of the old investment still unliquidated; and in the case of reorganizations, that the new enterprise, the new corporate structure, and the new property are substantially continuations of the old still unliquidated.

In Rev. Rul. 74-79, 1974-1 C.B. 81, the Internal Revenue Service (Service) ruled that § 355(b)(1)(A)’s requirement that the distributing corporation be engaged in an active trade or business was satisfied where the distributing corporation was an inactive holding company, and a subsidiary of the distributing corporation engaged in a § 332 liquidation for the purpose of transferring its active trade or business to the distributing corporation.

In Rev. Rul. 2003-51, 2003-1 C.B. 938, a person (transferor) transferred assets to a corporation (first corporation) in exchange for an amount of stock in the first corporation constituting control (first transfer). Pursuant to a binding agreement entered into by the transferor with a third party prior to the first transfer, (i) the transferor transferred the stock of the first corporation (second transfer) to another corporation (second corporation); (ii) the third party transferred money to the second corporation (third transfer); and (iii) the second corporation transferred the money transferred to it by the third party to its wholly-owned subsidiary, the first corporation. Immediately after these transactions, the transferor and the third party were in control of the second corporation, and the second corporation was in control of the first corporation. The Service ruled that the first transfer satisfied the control requirement of § 351(a) notwithstanding the second transfer. The Service concluded that the second transfer, a nontaxable disposition of the stock received in the first

transfer, was not inconsistent with the purposes of § 351 because the transaction lacked the characteristics of a sale and the transferor retained beneficial ownership in the assets transferred to the first corporation.

In *Estates of Bell v. Comm’r*, T.C.M. 1971-285, the Tax Court explained that sales of assets between a taxpayer’s wholly-owned corporations followed by liquidating distributions “literally comply with the provisions of the Code dealing with complete liquidations, sections 331, 332, and 337, but *in substance* accomplish a reorganization coupled with the distribution of a dividend.” (Emphasis added.) The court went on to state that, because § 356 is “the exclusive measure of dividend income provided by Congress where money is distributed to shareholders as an incident of a reorganization,” § 301 and § 1.301-1(l) were not applicable to the acquisitive reorganization under § 368(a)(1)(D).

ANALYSIS

Situation 1: The federal income tax consequences to *P* and *D* in Situation 1 will depend on whether the Date 1 and Date 2 transfers are treated as separate transactions. Because they are undertaken pursuant to the same overall plan, a question arises as to whether the two transactions are part of a single reciprocal transfer of property—an exchange.

If the Date 1 and Date 2 transfers are respected as separate transactions for federal income tax purposes, *P* would be treated as transferring property to *D* on Date 1 for *D* stock in an exchange to which § 351 applies, and *D* would be treated as distributing all the stock of *C* to *P* on Date 2 in a distribution to which § 355 applies (assuming the requirements under those Code sections are otherwise satisfied).

If the Date 1 and Date 2 transfers are integrated into a single exchange for federal income tax purposes, *P* would be treated as transferring its Business A property to *D* in exchange for a portion of the *C* stock in an exchange to which § 1001 applies. In such an exchange, gain or loss would be recognized to *P* on the transfer of its property to *D*; gain or loss would be recognized to *D*, under § 1001(a), upon its transfer of 25 percent

of the *C* stock to *P* in exchange for the property transferred to it. In addition, § 355 would not apply to any part of the distribution of *C* stock because *D* would not have distributed stock constituting § 368(c) control of *C*. Gain would be recognized to *D*, under § 311(b), upon the distribution of the remaining 75 percent of the *C* stock with respect to *P*'s stock in *D* to which § 301 would apply.

The determination of whether steps of a transaction should be integrated requires review of the scope and intent underlying each of the implicated provisions of the Code. The tax treatment of a transaction generally follows the taxpayer's chosen form unless: (1) there is a compelling alternative policy; (2) the effect of all or part of the steps of the transaction is to avoid a particular result intended by otherwise-applicable Code provisions; or (3) the effect of all or part of the steps of the transaction is inconsistent with the underlying intent of the applicable Code provisions. See *H.B. Zachry Co. v. Comm'r*, 49 T.C. 73 (1967); *Makover v. Comm'r*, T.C. Memo 1967-53; Rev. Rul. 78-330, 1978-2 C.B. 147. Sections 351, 355, and 368 generally allow continued ownership of property in modified corporate form without recognition of gain. See *American Compress & Warehouse Co. v. Bender*, 70 F.2d 655 (5th Cir. 1934), cert. denied, 293 U.S. 607 (1934); § 1.1002-1(c); Rev. Rul. 2003-51.

Section 355(b)(2)(C) and (D) permit the direct and indirect acquisition of an active trade or business by a corporation within the 5-year period ending on the date of a distribution in transactions in which no gain or loss was recognized. The intent of § 355(b)(2)(C) and (D) is to prevent the acquisition of a trade or business by the distributing corporation or the controlled corporation from an outside party in a taxable transaction within the 5-year pre-distribution period. See Rev. Rul. 78-442, 1978-2 C.B. 143 (holding that § 357(c) gain arising from a § 351 transfer of an active trade or business does not violate § 355(b)(2)(C)). These provisions ensure that transfers of assets in transactions eligible for nonrecognition treatment (nonrecognition transactions) throughout the 5-year period will not adversely impact an otherwise qualifying § 355 distribution. This principle is illus-

trated in Rev. Rul. 74-79, in which an active trade or business was transferred to a distributing corporation in a § 332 liquidation to satisfy the requirements of § 355(b).

The transfer of property permitted to be received by *D* in a nonrecognition transaction has independent significance when undertaken in contemplation of a distribution by *D* of stock and securities described in § 355(a)(1)(A). The transfer thus is respected as a separate transaction, regardless of whether the purpose of the transfer is to qualify the distribution under § 355(b). See, e.g., Rev. Rul. 78-330; § 1.355-6(d)(3)(v)(B), Example 1; and *Athanasios v. Comm'r*, T.C. Memo 1995-72. Back-to-back nonrecognition transfers are generally respected when consistent with the underlying intent of the applicable Code provisions and there is no compelling alternative policy. See, e.g., Rev. Rul. 2015-9, 2015-21 I.R.B. 972, and Rev. Rul. 2015-10, 2015-21 I.R.B. 973.

P's transfer on Date 1 is the type of transaction to which § 351 is intended to apply. Analysis of the transaction as a whole does not indicate that *P*'s transfer should be properly treated other than in accordance with its form. Each step provides for continued ownership in modified corporate form. Additionally, the steps do not resemble a sale, and none of the interests are liquidated or otherwise redeemed. On these facts, nonrecognition treatment under §§ 351 and 355 is not inconsistent with the congressional intent of these Code provisions. The effect of the steps in Situation 1 is consistent with the policies underlying §§ 351 and 355. Accordingly, the Date 1 and Date 2 transfers described in Situation 1 will be respected as separate transactions for federal income tax purposes. Therefore, § 351 applies to *P*'s transfer on Date 1 and § 355 applies to *D*'s transfer on Date 2.

The federal income tax consequences would be the same (qualification under § 355) if, instead of acquiring an active trade or business in a § 351 transfer from *P* to *D*, *D* acquired an active trade or business from a subsidiary of *P* in a cross-chain reorganization under § 368(a)(1). See Rev. Rul. 74-79.

Situation 2: If the distribution by *C* of money and other property on Date 1 is treated as separate from the distribution of

C stock, § 301 would apply to *D*'s receipt of the money and other property from *C*, and no gain would be recognized to *D* upon the transfer of property to *C*.

If the Date 1 distribution is treated as made in pursuance of the plan of reorganization under §§ 368(a)(1)(D) and 355 that includes the Date 2 distribution of *C* stock, the money and other property distributed by *C* to *D* would constitute boot to *D*, and, under § 361(b)(1)(B), gain would be recognized to *D* on its transfer of property to *C* to the extent of the amount of the money and the fair market value of the property. Section 361(b) requires gain recognition to *D* if boot is distributed to *D* and not further distributed by *D* to its shareholders or creditors in pursuance of the plan of reorganization unless the facts establish that the distribution is in substance a separate transaction. Cf., Rev. Rul. 71-364, 1971-2 C.B. 182 (finding that a distribution of money declared and paid following a reorganization exchange is treated as boot in the reorganization).

As noted above, in *Estates of Bell v. Comm'r*, the Tax Court explained that the boot rules are "the exclusive measure of dividend income provided by Congress where cash is distributed to shareholders as an incident of a reorganization." See also *American Manufacturing Co. v. Comm'r*, 55 T.C. 204 (1970). Section 361 broadly looks to whether transfers of money or other property occur "in pursuance of the plan of reorganization" or "in connection with the reorganization."

In Situation 2, the distribution is made in pursuance of the plan of reorganization. A distribution of money and other property in pursuance of the plan of reorganization will be treated as boot subject to recognition of gain, consistent with the congressional intent underlying § 361.

Therefore, the federal income tax treatment of the transaction will follow its substance, and the distribution of money and property by *C* to *D* will constitute a distribution of boot under § 361(b).

HOLDINGS

- (1) In Situation 1, the transfer by *P* to its subsidiary, *D*, of property (including a transfer of property constituting an active trade or business for

the purpose of meeting the requirements of § 355(b)(1)(A)), immediately followed by the distribution by *D* to *P* of the stock of its controlled subsidiary, *C*, is treated as an exchange to which § 351 applies, followed by a distribution of *C* stock to which § 355 applies.

- (2) In Situation 2, § 361, and not § 301, applies to the transfer of money or other property by *C* to *D* made in pursuance of the plan of reorganization under §§ 368(a)(1)(D) and 355.

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2017-3, 2017-1 I.R.B. 130, is modified by deleting section 5.02 (with respect to steps in North-South transactions). However, the Service may decline to issue a letter ruling addressing the integration of steps when appropriate in the interest of sound tax administration or on other grounds when warranted by the facts or circumstances of a particular case. There are also areas in which the Service will not issue letter rulings or determination letters because

the issues are inherently factual, in the interest of sound tax administration, and other reasons. See Rev. Proc. 2017-1, 2017-1 I.R.B. 1, section 6.02; Rev. Proc. 2017-3, sections 2.01 and 3.01(51).

DRAFTING INFORMATION

The principal author of this revenue ruling is Susan E. Massey of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Susan E. Massey at (202) 317-5024 (not a toll-free number).

Part III. Administrative, Procedural, and Miscellaneous

Temporary Relief for Fuel Removals Due to Energy Emergencies Resulting from West Shore Pipeline Shutdown

Notice 2017–30

SECTION 1. PURPOSE

This notice provides 180–day emergency relief for fuel removals from Milwaukee terminals due to energy emergencies resulting from the shutdown of the West Shore Pipeline. Once the 180–day emergency relief described in this notice expires, there will be subsequent temporary relief that provides a mechanism for refunds of the § 4081(a)(1) tax imposed upon removals of undyed diesel fuel and kerosene from the Milwaukee terminals when such fuel is subsequently removed from the Green Bay terminals as dyed fuel destined for a nontaxable use.

SECTION 2. BACKGROUND

.01 West Shore Pipeline Shutdown

The West Shore Pipeline is a 650–mile pipeline system that has transported refined petroleum products to the northeastern part of Wisconsin for over 50 years. The West Shore Pipeline is the only fuel pipeline serving Green Bay and northeastern Wisconsin. The West Shore Pipeline segment between the cities of Milwaukee and Green Bay closed on March 10, 2016, for repairs, testing, and inspections. On June 22, 2016, this segment of the West Shore Pipeline was shut down indefinitely after integrity concerns were detected. On April 21, 2017, the Wisconsin Department of Administration issued a statement that this segment of the West Shore Pipeline will not be replaced. Due to this unanticipated shut down and the decision that this section of the pipeline will not be replaced or reactivated, the areas of Green Bay and northeast Wisconsin are expected to have material fuel shortages for a relatively long period of time. In response to this shut down and the resulting fuel shortages, Wisconsin Governor Scott Walker issued Executive Orders on May 6, 2016,

September 7, 2016, and November 4, 2016, declaring energy emergencies.

Fuel is currently being removed from the Milwaukee terminals and transported via tank trucks and/or rail cars to Green Bay terminals in order to mitigate and avoid material fuel shortages and supply fuel to the northern portion of Wisconsin during the West Shore Pipeline outage. Aside from vessels, transporting fuel via tank trucks and rail cars is the only way to get fuel to Green Bay for distribution now that the pipeline is permanently shut down.

.02 Law

Section 4081(a)(1)(A)(ii) imposes tax on the removal of taxable fuel, which includes gasoline and diesel fuel, from any terminal.

Section 48.4081–1(b) of the Manufacturers and Retailers Excise Taxes Regulations defines “removal” as any physical transfer of taxable fuel, and any use of taxable fuel other than as a material in the production of taxable fuel or special fuels. Taxable fuel is not removed when it evaporates or is otherwise lost or destroyed.

Section 4081(a)(1)(B)(i) provides an exemption from the tax imposed by § 4081(a)(1)(A) for removals of taxable fuel transferred in bulk by pipeline or vessel to registered terminals.

Section 48.4081–2 provides the rules regarding tax on the removal of taxable fuel at the terminal rack.

Section 4081(a)(2)(A)(i) prescribes a tax rate of 18.3 cents per gallon of gasoline for the tax imposed by § 4081(a)(1)(A).

Section 4081(a)(2)(B) imposes an additional tax of 0.1 cent per gallon (referred to as Leaking Underground Storage Tank Trust Fund tax or the LUST tax).

Section 4081(a)(2)(A)(iii) prescribes a tax rate of 24.3 cents per gallon of diesel fuel or kerosene for the tax imposed by § 4081(a)(1)(A). Section 4081(a)(2)(B) imposes an additional LUST tax of 0.1 cent per gallon.

Section 4081(e) provides that, under regulations prescribed by the Secretary, if any person who paid the tax imposed by

§ 4081 with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4081.

Section 48.4081–7 sets forth the reporting requirements and other conditions for claiming a refund under § 4081(e).

Section 4082 provides that the tax imposed by § 4081 does not apply to diesel fuel and kerosene that is indelibly dyed in accordance with Treasury regulations, meets any marking requirements prescribed by Treasury regulations, and is destined for a nontaxable use.

.03 Reasons for Relief

Under existing law, tax is imposed under § 4081(a)(1) upon the removal of taxable fuel from the Milwaukee terminals (referred to as the first tax). The taxable fuel that is transported to and entered into the Green Bay terminals is subject to a second § 4081(a)(1) tax upon removal from the Green Bay terminals (referred to as the second tax). Section 4081(e) and § 48.4081–7 provide a refund mechanism that allows the person who pays the second tax, i.e., the position holder in Green Bay, to claim a refund (but not a credit) in the amount of the second tax paid (without interest). In the case of dyed fuel, there is no mechanism in existing law that allows a refund for taxable fuel that is removed from a Milwaukee terminal, transported to and entered into a Green Bay terminal, and dyed pursuant to the provisions of § 4082.

The Treasury Department and the Internal Revenue Service (IRS) recognize that position holders in Milwaukee will need time to adjust sales contracts and business practices and to explore the possibility of increasing bulk transfers via vessel in order to account for the imposition of the § 4081(a)(1) tax upon the removal of taxable fuel from the Milwaukee terminals now that the West Shore Pipeline is permanently closed. Accordingly,

the Treasury Department and the IRS are providing temporary emergency relief from the removal rules under § 4081(a)(1)(A) and § 48.4081-2(b) for a period of 180 days, subject to the conditions in section 3 of this notice. This relief will temporarily put position holders in the Milwaukee terminals in the same position as they were prior to the shutdown of the West Shore pipeline. Following the expiration of the temporary emergency relief described in section 3.01 of this notice, relief is available through § 4081(e), which allows position holders in the Green Bay terminals to claim a refund (but not a credit) of the second tax imposed upon the removal of taxable fuel from the Green Bay terminals.

The Treasury Department and the IRS also recognize that there is no mechanism under existing law that permits a refund of the § 4081(a)(1) tax imposed upon removal of taxable fuel from a Milwaukee terminal when that fuel is transported to and entered into a Green Bay terminal, and then removed from the Green Bay terminal as dyed fuel destined for a nontaxable use. Accordingly, the Treasury Department and the IRS are providing a temporary refund mechanism for the first tax paid on the taxable fuel when it is removed from a Milwaukee terminal, transported to and entered into a Green Bay terminal, and later removed from that Green Bay terminal as dyed fuel destined for a nontaxable use. Under this temporary relief, the person who dyes the fuel at the rack in Green Bay will be allowed to claim a refund (without interest) of the first tax. The refund provision under this temporary relief will be similar to the refund provision for taxable fuel under § 4081(e) in that the same person is allowed to make the claim for refund (i.e., the position holder who removes the taxable or dyed fuel from the Green Bay terminal).

SECTION 3. TEMPORARY RELIEF

.01 180-Day Emergency Relief

For the period beginning on May 3, 2017 and ending on October 30, 2017, tax will be imposed under § 4081(a)(1)(A)(ii) and § 48.4081-2(b) on the removal of taxable fuel from a terminal rack in Milwaukee, unless the fuel is transported by tank truck or rail car and entered into a

Green Bay terminal within 24 hours of its removal from the Milwaukee terminal. If such fuel is entered into a Green Bay terminal within 24 hours of its removal from a Milwaukee terminal, the fuel will be subject to tax under § 4081(a)(1)(A)(ii) upon its removal from the Green Bay terminal rack, unless § 4082 applies. All existing rules under § 4081 and § 48.4081-2 apply once the fuel removed from a Milwaukee terminal is entered into a Green Bay terminal in accordance with the requirements prescribed in this section.

This relief is subject to satisfaction of all of the conditions to relief set forth in section 3.03 of this notice. Upon the termination of this 180-day emergency relief, the normal rules of § 4081(a)(1)(A)(ii) and § 48.4081-2(b) will apply to removals of taxable fuel from the Milwaukee terminals.

.02 Temporary Dyed Fuel Relief

For the period beginning on October 31, 2017, and ending on May 3, 2018, if any person who removes diesel fuel or kerosene that satisfies the requirements of § 4082 from a Green Bay terminal establishes to the satisfaction of the Secretary that a prior tax was paid with respect to the removal of such fuel from a Milwaukee terminal, then an amount equal to the prior tax paid shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by § 4081. No refund will be allowed unless the fuel removed from a Milwaukee terminal was transported by tank truck or rail car and entered into a Green Bay terminal within 24 hours of its removal from the Milwaukee terminal.

The Treasury Department and the IRS will publish guidance on how to submit claims for refund pursuant to this section 3.02 prior to the expiration of the relief described in section 3.01 of this notice. The relief in this section 3.02 will be subject to satisfaction of all of the conditions to relief set forth in section 3.03 of this notice.

.03 Conditions to Relief

The relief granted in sections 3.01 and 3.02 of this notice is available only if all of the following conditions are satisfied:

- (1) The segment of the West Shore Pipeline between Milwaukee and Green Bay remains permanently and completely shut down.
- (2) All operators of terminals from which fuel is removed or entered pursuant to the relief granted in sections 3.01 and 3.02 of this notice must timely and accurately satisfy Excise Summary Terminal Activity Reporting System (ExSTARS) reporting obligations by filing Form 720-TO, Terminal Operator Report, as required by § 4101(d) and § 48.4101-1(h)(1)(iii). Form 720-TO filers are reminded of the information reporting requirements under § 4101(d) and the penalty provisions of § 6725 for any failure to report and any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.
- (3) All position holders with respect to fuel removed or entered pursuant to the relief granted in sections 3.01 and 3.02 of this notice must keep records pursuant to § 48.4101-1(h)(1)(ii) that sufficiently show tax liability under § 4081 and payments or deposits of such liability.
- (4) The same person who removes taxable fuel from a Milwaukee terminal (i.e., the position holder in the Milwaukee terminal) must enter the fuel into a Green Bay terminal within 24 hours of its removal from the Milwaukee terminal.

The relief set forth in sections 3.01 and 3.02 of this notice is not available with respect to any transaction for which one or more conditions set forth in this section 3.03 are not satisfied.

SECTION 4. EFFECTIVE DATES

The 180-day emergency relief provided in section 3.01 of this notice applies to removals from Milwaukee terminals on or after May 3, 2017, and before October 31, 2017.

The temporary dyed fuel relief provided in section 3.02 of this notice applies to removals of diesel fuel and kerosene from Green Bay terminals on or after October 31, 2017, and before May 4, 2018.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Pass-throughs & Special Industries). For further information regarding this notice contact (202) 317-6855 (not a toll-free number).

*26 CFR 601.601: Rules and Regulations.
(Also Part I, §§ 25, 103, 143; 1.25-4T, 1.103-1, 6a.103A-2.)*

Rev. Proc. 2017-35

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the income requirements described in § 143(f).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term “qualified bond” includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the applicable volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term “qualified mortgage bond” means a bond that is issued as part of a “qualified mortgage issue”. Section 143(a)(2)(A) provides that the term “qualified mortgage issue” means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of paragraphs (1) and (2) of § 141(b); and (iv) with re-

spect to amounts received more than 10 years after the date of issuance, repayments of \$250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

.04 Section 143(f)(4) provides that the term “applicable median family income” means the greater of (A) the area median gross income for the area in which the residence is located, or (B) the statewide median gross income for the state in which the residence is located.

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the

United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued, and nonissued bond amounts elected, after December 31, 1988. See § 4005(h) of the Technical and Miscellaneous Revenue Act of 1988, 1988-3 C.B. 1, 311 (1988).

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on April 14, 2017, and may be obtained by calling the HUD reference service at 1-800-245-2691. The income information is also available at HUD’s World Wide Web site, <http://www.huduser.gov/portal/datasets/il.html>, which provides a menu from which you may select the year and type of data of interest.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on April 03, 2017, in Rev. Proc. 2017-27, 2017-14 I.R.B. 1042.

SECTION 3. APPLICATION

.01 When computing the income requirements of § 143(f), issuers of qualified mortgage bonds and mortgage credit certificates must use either (1) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on March 28, 2016, or (2) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 14, 2017.

.02 If an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on March 28, 2016, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on March 28, 2016, for all purposes under § 143(f). Likewise, if an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 14, 2017, to compute the housing cost/income

ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 14, 2017, for all purposes under § 143(f).

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2016–26, 2016–22 I.R.B. 1018, is obsolete except as provided in §§ 3.01, 3.02, or 5.01 of this revenue procedure.

.02 This revenue procedure does not affect the effective date provisions of Rev. Rul. 86–124, 1986–2 C.B. 27. Those effective date provisions will remain operative at least until the Service publishes a new revenue ruling that conforms the approach to effective dates set forth in Rev. Rul. 86–124 to the general approach taken in this revenue procedure.

SECTION 5. EFFECTIVE DATES

.01 Issuers must use the United States and area median gross income figures specified in § 3.01 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for

residences that are purchased, in the period that begins on April 14, 2017, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue procedure.

DRAFTING INFORMATION

The principal authors of this revenue procedure are David White and Timothy Jones of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. White or Mr. Jones at (202) 317-6980 (not a toll-free number).

Rev. Proc. 2017–36

SECTION 1. PURPOSE

This revenue procedure provides indexing adjustments for certain provisions under sections 36B and 5000A of the Internal Revenue Code. In particular, it updates the Applicable Percentage Table in § 36B(b)(3)(A)(i) to provide the Applicable Percentage Table for 2018. This table is used to calculate an individual's premium tax credit. This revenue procedure

also updates the required contribution percentage in § 36B(c)(2)(C)(i)(II) for plan years beginning after calendar year 2017. The percentage is used to determine whether an individual is eligible for affordable employer-sponsored minimum essential coverage under § 36B. This revenue procedure uses the methodology described in Section 4 of Rev. Proc. 2014–37, 2014–2 C.B. 363, to index the Applicable Percentage Table and the § 36B required contribution percentage for 2018. Additionally, this revenue procedure cross-references the required contribution percentage under § 5000A(e)(1)(A) for plan years beginning after calendar year 2017, as determined under guidance issued by the Department of Health and Human Services. The percentage is used to determine whether an individual is eligible for an exemption from the individual shared responsibility payment because of a lack of affordable minimum essential coverage.

SECTION 2. ADJUSTED ITEMS

.01 *Applicable Percentage Table for 2018.* For taxable years beginning in 2018, the Applicable Percentage Table for purposes of § 36B(b)(3)(A)(i) and § 1.36B–3T(g) is:

Household income percentage of Federal poverty line:	Initial percentage	Final percentage
Less than 133%	2.01%	2.01%
At least 133% but less than 150%	3.02%	4.03%
At least 150% but less than 200%	4.03%	6.34%
At least 200% but less than 250%	6.34%	8.10%
At least 250% but less than 300%	8.10%	9.56%
At least 300% but not more than 400%	9.56%	9.56%

.02 *Section 36B Required Contribution Percentage for 2018.* For plan years beginning in 2018, the required contribution percentage for purposes of § 36B(c)(2)(C)(i) and § 1.36B–2T(c)(3)(v)(C) is 9.56%.

.03 *Section 5000A Required Contribution Percentage.* In the 2018 Benefit and Payment Parameters, 81 Fed. Reg. 94058 (December 22, 2016), for plan years beginning in 2018, the Department of Health and Human Services (HHS) announced that the Section 5000A required contribution percentage for purposes of

§ 5000A(e)(1)(A) and § 1.5000A–3(e)(2) is 8.05%. See Exchange and Insurance Market Standards for 2015 and beyond, 79 Fed. Reg. 30239, 30302 (May 27, 2014), for further information on the computation methodology and publication approach for the Section 5000A required contribution percentage.

SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for taxable years and plan years beginning after December 31, 2017.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Bill Ruane of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Bill Ruane at (202) 317-4718 (not a toll-free number).

Rev. Proc. 2017-37

SECTION 1. PURPOSE

This revenue procedure provides the 2018 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code.

SECTION 2. 2018 INFLATION ADJUSTED ITEMS

Annual contribution limitation. For calendar year 2018, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is \$3,450. For calendar year 2018, the annual limitation

on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is \$6,900.

High deductible health plan. For calendar year 2018, a “high deductible health plan” is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than \$1,350 for self-only coverage or \$2,700 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed \$6,650 for self-only coverage or \$13,300 for family coverage.

SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for calendar year 2018.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Bill Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding § 223 and HSAs, contact Karen Levin at (202) 317-5500 (not a toll-free number). For further information regarding the calculation of the inflation adjustments in this revenue procedure, contact Mr. Ruane at (202) 317-4718 (not a toll-free number).

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 sub-

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletin 2017–1 through 2017–21

Action on Decision:

2017-1, 2017-7 I.R.B. 868
2017-2, 2017-15 I.R.B. 1072
2017-3, 2017-15 I.R.B. 1072
2017-4, 2017-15 I.R.B. 1073

Announcements:

2017-01, 2017-08 I.R.B. 941
2017-02, 2017-10 I.R.B. 1007
2017-03, 2017-15 I.R.B. 1077
2017-04, 2017-16 I.R.B. 1106

Notices:

2017-1, 2017-2 I.R.B. 367
2017-2, 2017-4 I.R.B. 539
2017-3, 2017-2 I.R.B. 368
2017-4, 2017-4 I.R.B. 541
2017-5, 2017-6 I.R.B. 779
2017-6, 2017-3 I.R.B. 422
2017-7, 2017-3 I.R.B. 423
2017-8, 2017-3 I.R.B. 423
2017-9, 2017-4 I.R.B. 542
2017-10, 2017-4 I.R.B. 544
2017-12, 2017-5 I.R.B. 742
2017-13, 2017-6 I.R.B. 780
2017-14, 2017-6 I.R.B. 783
2017-15, 2017-6 I.R.B. 783
2017-16, 2017-7 I.R.B. 913
2017-17, 2017-15 I.R.B. 1074
2017-18, 2017-9 I.R.B. 997
2017-19, 2017-9 I.R.B. 1000
2017-20, 2017-11 I.R.B. 1010
2017-21, 2017-13 I.R.B. 1026
2017-22, 2017-13 I.R.B. 1033
2017-23, 2017-16 I.R.B. 1100
2017-24, 2017-17 I.R.B. 1127
2017-25, 2017-17 I.R.B. 1127
2017-26, 2017-17 I.R.B. 1129
2017-27, 2017-19 I.R.B. 1232
2017-28, 2017-19 I.R.B. 1235
2017-29, 2017-20 I.R.B. 1243
2017-30, 2017-21 I.R.B. 1248

Proposed Regulations:

REG-137604-07, 2017-7 I.R.B. 923
REG-128276-12, 2017-2 I.R.B. 369
REG-103477-14, 2017-5 I.R.B. 746
REG-112324-15, 2017-4 I.R.B. 547
REG-127203-15, 2017-7 I.R.B. 918
REG-131643-15, 2017-6 I.R.B. 865
REG-134438-15, 2017-2 I.R.B. 373
REG-112800-16, 2017-4 I.R.B. 569
REG-123829-16, 2017-5 I.R.B. 764

Proposed Regulations:—Continued

REG-123841-16, 2017-5 I.R.B. 766
REG-133353-16, 2017-2 I.R.B. 372
REG-134247-16, 2017-5 I.R.B. 744
REG-135122-16, 2017-9 I.R.B. 1005

Revenue Procedures:

2017-1, 2017-1 I.R.B. 1
2017-2, 2017-1 I.R.B. 106
2017-3, 2017-1 I.R.B. 130
2017-4, 2017-1 I.R.B. 146
2017-5, 2017-1 I.R.B. 230
2017-7, 2017-1 I.R.B. 269
2017-12, 2017-3 I.R.B. 424
2017-13, 2017-6 I.R.B. 787
2017-14, 2017-3 I.R.B. 426
2017-15, 2017-3 I.R.B. 437
2017-16, 2017-3 I.R.B. 501
2017-18, 2017-5 I.R.B. 743
2017-19, 2017-7 I.R.B. 913
2017-21, 2017-6 I.R.B. 791
2017-22, 2017-6 I.R.B. 863
2017-23, 2017-7 I.R.B. 915
2017-24, 2017-7 I.R.B. 916
2017-25, 2017-14 I.R.B. 1039
2017-26, 2017-13 I.R.B. 1036
2017-27, 2017-14 I.R.B. 1042
2017-28, 2017-14 I.R.B. 1061
2017-29, 2017-14 I.R.B. 1065
2017-30, 2017-18 I.R.B. 1131
2017-31, 2017-16 I.R.B. 1104
2017-32, 2017-17 I.R.B. 1109
2017-33, 2017-19 I.R.B. 1236
2017-35, 2017-21 I.R.B. 1250
2017-36, 2017-21 I.R.B. 1251
2017-37, 2017-21 I.R.B. 1252

Revenue Rulings:

2017-1, 2017-3 I.R.B. 377
2017-2, 2017-2 I.R.B. 364
2017-3, 2017-4 I.R.B. 522
2017-4, 2017-6 I.R.B. 776
2017-5, 2017-9 I.R.B. 1000
2017-6, 2017-12 I.R.B. 1011
2017-7, 2017-10 I.R.B. 1009
2017-8, 2017-14 I.R.B. 1037
2017-9, 2017-21 I.R.B. 1244
2017-10, 2017-17 I.R.B. 1108
2017-11, 2017-19 I.R.B. 1230

Treasury Decisions:

9794, 2017-2 I.R.B. 273
9795, 2017-2 I.R.B. 326
9796, 2017-3 I.R.B. 380
9801, 2017-2 I.R.B. 355
9802, 2017-2 I.R.B. 361
9803, 2017-3 I.R.B. 384

Treasury Decisions:—Continued

9804, 2017-3 I.R.B. 406
9806, 2017-4 I.R.B. 524
9807, 2017-5 I.R.B. 573
9808, 2017-5 I.R.B. 580
9809, 2017-5 I.R.B. 664
9810, 2017-6 I.R.B. 775
9811, 2017-7 I.R.B. 869
9814, 2017-7 I.R.B. 878
9815, 2017-9 I.R.B. 944
9817, 2017-9 I.R.B. 968

¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2017–1 through 2017–21

Notices:

2002-1

Amplified by

Notice 2017-1, 2017-2 I.R.B. 367

2010-46

Obsoleted by

Notice 2017-1, 2017-2 I.R.B. 367

2016-29

Modified by

Notice 2017-6, 2017-3 I.R.B. 422

Revenue Procedures:

2013-22

Clarified by

Rev. Proc. 2017-18, 2017-05 I.R.B. 743

2015-57

Modified by

Rev. Proc. 2017-24, 2017-07 I.R.B. 916

Treasury Decisions:

2010-46

Obsoleted by

T.D. 9815 2017-09 I.R.B. 944

¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

Internal Revenue Service

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INTERNAL REVENUE BULLETIN

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

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