Internal Revenue
bulletin

Bulletin No. 2013-3
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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

T.D. 9603, page 273.

Final regulations under section 181 of the Code provide rules to reflect the amendments to section 181 made by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. Section 181 allows producers to deduct the first $15 million ($20 million in certain cases) of the costs of producing qualified film and television productions.

T.D. 9608, page 274.

Final regulations that provide rules under section 7216 of the Code relating to the disclosure or use of tax return information by tax return preparers.

REG–141066–09, page 289.

Proposed regulations that will provide comprehensive guidance for the award program authorized under section 7623 of the Code, as amended.

Rev. Proc. 2013–14, page 283.

This procedure under section 7216 of the Code provides guidance, pursuant to section 301.7216–3 of the Regulations on Procedure and Administration, to tax return preparers regarding the format and content of taxpayer consents to disclose and consents to use tax return information with respect to taxpayers filing a return in the Form 1040 series. Rev. Proc. 2008–35 modified and superseded.

Announcement 2013–6, page 307.

This document contains corrections to a notice of proposed rulemaking (REG–140668–07, 2013–43 I.R.B. 501) that was published in the Federal Register on Monday, September 17, 2012 (77 FR 57452). The proposed regulation provides guidance regarding the treatment of corporate equity reduction transactions (CERTs), including the treatment of multiple step plans for the acquisition of stock and CERTs involving members of a consolidated group.

Announcement 2013–7, page 308.

This document amends temporary regulations (T.D. 9564, 2012–14 I.R.B. 614) regarding the deduction and capitalization of expenditures under sections 162(a) and 263(a) of the Code relating to tangible property to apply to taxable years beginning on or after January 1, 2014, while permitting taxpayers to apply the temporary regulations for taxable years beginning on or after January 1, 2012, and before applicability date of the final regulations.

TAX CONVENTIONS

Announcement 2013–5, page 306.

This document provides a copy of the Competent Authority Agreement entered into by the competent authorities of the United States of America and the Kingdom of Norway clarifying the meaning of "remuneration described in Article 17 (Governmental Functions)" and "payments described in Article 19 (Social Security Payments)" as those phrases are used in the last sentence of paragraph 6 of Article 24 (Source of Income) of the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed on December 3, 1971, and as amended by the Protocol signed on September 19, 1980.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

Notice 2013–1, page 281.
This notice updates the list of Indian tribes that have settled tribal trust cases between the United States and those Indian tribes. Members of those tribes may receive *per capita* payments that are excluded from income. Notice 2012–60 superseded.

Announcement 2013–10, page 311.
This document contains updates to Publication 1220 due to the recent changes made by the American Taxpayer Relief Act of 2012. Rev. Proc. 2012–30 updated.

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.

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

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

Section 168.—Accelerated Cost Recovery System

Treasury Decision amending the temporary regulations regarding the deduction and capitalization of expenditures related to tangible property to apply to taxable years beginning on or after January 1, 2014, while permitting taxpayers to apply the temporary regulations for taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. See Announcement 2013-7, page 308.

Section 181.—Treatment of Certain Qualified Film and Television Productions

26 CFR 1.181–0: Table of contents.

T.D. 9603

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to deductions for the cost of producing qualified film and television productions. These final regulations reflect changes to the law made by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 and affect taxpayers that produce films and television productions within the United States.

DATES: *Effective Date:* These regulations are effective on December 7, 2012.

Applicability Dates: For dates of applicability, see §1.181–6.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend 26 CFR part 1 to reflect amendments made to section 181 of the Internal Revenue Code of 1986 (Code) by section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law No. 110–343 (122 Stat. 3765) (October 3, 2008).

On October 19, 2011, the IRS and the Treasury Department published in the **Federal Register** (T.D. 9552, 2011–47 I.R.B. 783 [76 FR 64816]) temporary regulations amending the rules under section 181 for deductions relating to the cost of producing qualified film and television productions to reflect section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. A notice of proposed rulemaking (REG–146297–09, 2011–47 I.R.B. 795) cross-referencing the temporary regulations was published in the **Federal Register** (76 FR 64879) on the same day. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations under section 181 are adopted by this Treasury decision and the corresponding temporary regulations are removed.

Effective/Applicability Date

These final regulations apply to qualified film and television productions to which section 181 is applicable and for which the first day of principal photography or in-between animation occurs on or after December 7, 2012. The owner of a qualified film or television production may apply the final regulations to productions to which section 181 applies and for which principal photography or, for an animated production, in-between animation commenced before December 7, 2012.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.181–0 is amended by:

1. Adding the entries for §1.181–1 paragraphs (a)(6), (b)(1)(ii) and (c)(2).

2. Revising the entry for §1.181–6 paragraph (b) and removing paragraph (c).

The revision and additions to read as follows:

§1.181–0 Table of contents.

* * * * *

§1.181–1 Deduction for qualified film and television production costs.

(a) * * *

(6) Post-amendment production.

* * * * *

(b) * * *

(1) * * *

(ii) Post-amendment production.

* * * * *

(c) * * *

(2) Post-amendment production.

* * * * *

§1.181–6 Effective/applicability date.

* * * * *

(b) Pre-effective date productions.

§1.181–0T [Removed]

Par. 3. Section 1.181–0T is removed.

Par. 4. Section 1.181–1 is amended by revising paragraphs (a)(1)(ii), (a)(6), (b)(1)(ii), (b)(2)(vi), and (c)(2) to read as follows:

§1.181–1 Deduction for qualified film and television production costs.

(a) * * * (1) * * *

(ii) This section provides rules for determining the owner of a production, the production costs (as defined in paragraph (a)(3) of this section), the maximum amount of aggregate production costs (as defined in paragraph (a)(4) of this section) that may be paid or incurred for a pre-amendment production (as defined in paragraph (a)(5) of this section) for which the owner makes an election under section 181, and the maximum amount of aggregate production costs that may be claimed as a deduction for a post-amendment production (as defined in paragraph (a)(6) of this section) for which the owner makes an election under section 181. Section 1.181–2 provides rules for making the election under section 181. Section 1.181–3 provides definitions and rules concerning qualified film and television productions. Section 1.181–4 provides special rules, including rules for recapture of the deduction. Section 1.181–5 provides examples of the application of §§1.181–1 through 1.181–4, while §1.181–6 provides the effective date of §§1.181–1 through 1.181–5.

* * * * *

(6) *Post-amendment production*. The term *post-amendment production* means a qualified film or television production commencing on or after January 1, 2008.

* * * * *

(b) * * * (1) * * *

(ii) *Post-amendment production*. Section 181 permits a deduction for the first $15,000,000 (or, if applicable under paragraph (b)(2) of this section, $20,000,000) of the aggregate production costs of any post-amendment production.

* * * * *

(2) * * *

(vi) *Allocation*. Solely for purposes of determining whether a production qualifies for the higher production cost limit (for pre-amendment productions) or deduction limit (for post-amendment productions) provided under this paragraph (b)(2), compensation to actors (as defined in §1.181–3(f)(1)), directors, producers, and other relevant production personnel (as defined in §1.181–3 (f)(2)) is allocated entirely to first-unit principal photography.

* * * * *

(c) * * *

(2) *Post-amendment production*. Amounts not allowable as a deduction under section 181 for a post-amendment production may be deducted under any other applicable provision of the Code.

§1.181–1T [Removed]

Par. 5. Section 1.181–1T is removed.

Par. 6. Section 1.181–6 is revised to read as follows:

§1.181–6 Effective/applicability date.

(a) *In general*. Except as otherwise provided in this section, §§1.181–1 through 1.181–5 apply to productions the first day of principal photography for which occurs on or after September 29, 2011. Paragraphs 1.181–1(a)(1)(ii), (a)(6), (b)(1)(ii), (b)(2)(vi), and (c)(2) of §1.181–1 apply to productions to which section 181 is applicable and for which the first day of principal photography or in-between animation occurs on or after December 7, 2012.

(b) *Pre-effective date productions*. For any taxable year for which the period of limitation on refund or credit under section 6511 has not expired, the owner may apply §§1.181–1 through 1.181–5 to any production to which section 181 applies and for which the first day of principal photography (or in-between animation) occurred before December 7, 2012, provided the owner applies all relevant provisions of §§1.181–1 through 1.181–5 to the production.

§1.181–6T [Removed]

Par. 7. Paragraph 1.181–6T is removed.

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

Approved November 30, 2012.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 6, 2012, 8:45 a.m., and published in the issue of the Federal Register for December 7, 2012, 77 F.R. 72923)

Section 7216.—Disclosure or Use of Information by Preparers of Returns

26 CFR 301.7216–0: Table of contents.

T.D. 9608

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide rules relating to the disclosure or use of tax return information by tax return preparers. These regulations provide updated guidance affecting tax return preparers regarding the use of information related to lists for solicitation of tax return business; the disclosure or use of statistical compilations

of data under section 7216 of the Internal Revenue Code (Code) by a tax return preparer in connection with, or in support of, a tax return preparer's tax return preparation business; and the disclosure or use of information for the purpose of performing conflict reviews.

DATES: *Effective Date:* These regulations are effective on December 28, 2012.

Applicability Date: For date of applicability see §301.7216–2(s).

FOR FURTHER INFORMATION CONTACT: Emily M. Lesniak, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Regulations on Procedure and Administration (26 CFR part 301). On January 4, 2010, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–131028–09, 2010–4 I.R.B. 332) in the **Federal Register** (75 FR 94), cross-referencing temporary regulations (T.D. 9478, 2010–4 I.R.B. 315 [75 FR 48]), providing rules relating to the ability of a tax return preparer to use tax return information for the purposes of compiling, maintaining, and using lists for solicitation of tax return business under §301.7216–2T(n); to disclose or use statistical compilations of data described in §301.7216–1(b)(3)(i)(B) under §301.7216–2T(o); and to disclose or use tax return information for the purpose of performing conflict reviews under §301.7216–2T(p) without taxpayer consent. The modifications to §301.7216–2(o) in the temporary and proposed regulations were made following the issuance of Notice 2009–13, 2009–6 I.R.B. 447 (February 9, 2009), and the receipt of comments submitted in response to that notice. These comments were summarized in the preamble to T.D. 9478. No public hearing on the notice of proposed rulemaking was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. All comments were considered and are available for public inspection at *www.regulations.gov* or upon request. After consideration of all the comments, the proposed regulations, with minor clarifications and revisions to ensure the language of the regulations is internally consistent and technically correct, are adopted by this Treasury decision. This preamble summarizes the significant comments received by the IRS and Treasury.

Summary of Comments

The IRS and Treasury received seven (7) comments in response to the proposed regulations. Some of the discussion contained in the comments did not relate to the rules in the proposed regulations but instead was directed towards other unrelated content contained in the section 7216 regulations or other published guidance pertaining to section 7216. This Summary of Comments focuses solely on comments relating to the proposed regulations and does not address comments relating to other published guidance pertaining to section 7216, which are outside the scope of this rule.

1. *Comments Relating to §301.7216–2(n) of the Proposed Regulations*

A. *Use of the list*

As proposed, §301.7216–2(n) allows tax return preparers to maintain a list of limited tax return information that may be used by the compiler to contact taxpayers to provide tax information and general business or economic information or analysis for educational purposes or to solicit tax return preparation services.

One commentator asked to expand the acceptable list maintenance purposes to include solicitation of "accounting services" "consistent with legal and ethical responsibilities." The commentator explained that these accounting services include, for example, assistance with bookkeeping, the preparation of payroll returns, and the preparation of regulatory returns. The commentator also included the preparation of state and local income tax returns as an accounting service. The preparation of state and local income tax returns is, however, tax return preparation expressly authorized by the statute, and use of the list is permissible to solicit this service.

The language of section 7216(a)(2) prohibits the use of "any such information for any purposes other than to prepare, or assist in the preparing, of any such return . . ." except as specifically excepted by section 7216(b). The IRS and Treasury have determined that it is inconsistent with the purpose of section 7216 to exercise regulatory authority to provide an exception under section 7216 for the use of tax return information to solicit accounting services. Taxpayers may consent in writing to allow tax return preparers to use their tax return information to solicit non-tax return preparation services, such as the accounting services listed by the commentator. Accordingly, to the extent the commentator requested the inclusion of accounting services as a list maintenance purpose, this comment was not adopted.

The proposed regulations provide: "This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services." A commentator asked that the final regulations clarify this statement. The commentator specifically asked whether, under the rule set forth in the proposed regulations, articles could be included in a newsletter that address several topics that do not constitute tax return preparation services.

Under the final regulations, a tax return preparer may, without taxpayer consent, compile a list of certain taxpayer specific information that may be used to contact the taxpayers on the list for two purposes: 1) providing tax information and general business or economic information or analysis for educational purposes, and 2) soliciting additional tax return preparation services. A tax return preparer may not use the list to solicit non-tax return preparation services. The final regulations do not attempt to describe every scenario that may constitute either a permissible or prohibited use of the list. Rather, a tax return preparer seeking to use tax return information in the manner proposed by the commentator must carefully consider, on a case-by-case basis, the specific content of a particular newsletter article to ensure that the content meets the requirements of §301.7216–2(n). For example, a newsletter that summarizes recent case law or describes current legal developments

would be considered to be for educational or informational purposes and a permissible use of the list. If a tax return preparer wishes to solicit non-tax return preparation services in the preparer's newsletter, a consent must be obtained from clients that authorizes the use of specified tax return information to solicit those non-tax return preparation services in the preparer's newsletter.

The final regulations retain the provisions in the proposed regulations that require written consent for all other purposes not expressly allowed by the regulations. This is consistent with the congressional discussion regarding section 7216, which provides that "[section 7216] simply preserves the confidentiality of information provided by the taxpayer to the one who prepares the returns as a professional act." Senate Discussion on Conference Report, 117 Cong. Record S. 18,627 (daily ed. November 15, 1971) (statement of Sen. Mathias). This floor discussion further provides that "[p]resumably, where appropriate, the Treasury Department will permit the use of the information within the business organization of the preparer of the return if the taxpayers [sic] *has indicated in writing* that he desires the information to be used by the organization *for some purpose specifically benefitting the taxpayer*." (Emphasis added). House Discussion on Conference Report, 117 Cong. Rec. H12,118 (daily ed. Dec. 9, 1971) (statement of Rep. Mills).

B. *Authorized delivery methods*

One commentator recommended that the proposed regulations be clarified to state that §301.7216–2(n)(1) permits a tax return preparer to use any delivery method that employs or is based on the list information sanctioned by that regulation provision. The commentator expressed a concern that the two examples provided in the temporary regulations limited the method of delivery to only e-mail or U.S. mail. The examples were not intended to limit the scope of the rule. The final regulations authorize any delivery method that will facilitate direct contact with the taxpayers on the list through the use of only the information authorized for compilation of a list under §301.7216–2(n). The examples were modified to clarify this point.

C *Limits on tax return information contained in lists*

One commentator suggested removing any limits on the tax return information a tax return preparer may include in compiling and maintaining lists for the solicitation of tax return business under §301.7216–2(n). This comment appears to be based upon an interpretation that the policy of section 7216 was intended to protect only privacy concerns. Section 7216(b)(3) provides the Secretary with broad authority to issue regulations authorizing specific disclosures or uses of tax return information. When publishing regulations allowing for these disclosures or uses, the IRS and Treasury must balance congressional intent and concerns for the protection of sensitive taxpayer data with the benefits taxpayers may receive from the proposed disclosures or uses. Removal of all restrictions on the allowable types of tax return information that may be included in the compilation and maintenance of lists is inconsistent with section 7216's underlying purpose. The proposed regulations expanded the types of tax return information a tax return preparer may use to compile a list for the purpose of soliciting tax return preparation business in a manner consistent with the purpose of section 7216 and the regulations. Accordingly, this comment was not adopted.

The commentator also stated that the temporary regulations contained ambiguous and vague language that required clarification regarding the entities and form numbers that may be maintained, such as whether an S corporation can be distinguished from a C corporation or whether a Form 1120 can be distinguished from a Form 1120–S. The rule and examples in the regulations already address whether entity classifications maintained in a list pursuant to §301.7216–2(n) include individuals and the types of businesses that would file different types of returns. The regulations provide that the "specific type of business entity" may be maintained in the list. Further, *Example 1* in §301.7216–2(n)(2) illustrates that tax return preparers may limit the provision of information based upon filer type. In addition, the income tax return form number refers to the form number that appears on the first page of the particular tax return form that the tax return preparer prepares (for example, Form 1120–S). To clarify this point, a parenthetical has been added to §301.7216–2(n).

One commentator stated that the proposed regulations should be clarified regarding whether nontax return information may be included in a list maintained pursuant to §301.7216–2(n) and that the regulations should be modified to state that nontax return information can be included in the list with the allowed items of tax return information. This comment was not adopted. The inclusion of nontax return information in the list could facilitate circumvention of the restrictions of section 7216 as to items of tax return information that may not be kept on the list by permitting tax return preparers to obtain the tax return information from other sources. In any event, if tax return preparers wish to include additional information in a list, they may obtain consent to do so from their clients. The language in §301.7216–2(n), however, has been clarified to eliminate any potential confusion arising from the wording of the provision.

One commentator recommended that the IRS and Treasury issue guidance, pursuant to the terms of §301.7216–2T(n), to further expand the types of tax return information that may be included in a list compiled for solicitation of tax return business. This comment was not adopted. This comment requested that the tax return information that may be included in a list compiled for solicitation purposes be expanded to include tax schedules filed, certain information regarding tax preparation software, the date taxpayers file their returns, the employer identification number of taxpayers' employers, the number and age of taxpayers' dependents, and whether taxpayers file with a tax balance due. The IRS and Treasury considered adding each item to the information that may be included in a list compiled for solicitation of tax return business. Including these items, however, would be inconsistent with the taxpayer protection purpose of section 7216, as demonstrated by the congressional discussion. Moreover, certain items present a risk of abuse by tax return preparers that would exceed any potential benefit to the taxpayer.

2. *Comments Relating to §301.7216–2(o) of the Proposed Regulations*

A. *Clarify meaning of "bona fide research" and "public policy discussions"*

One commentator recommended that the final regulations clarify the meaning of "*bona fide* research" and "public policy discussions" by explicitly including examples of individuals or entities that engage in these activities, including lawmakers, academics, nonprofit organizations, and other agencies that facilitate tax policy. While these individuals and entities may, at times, conduct *bona fide* research or engage in public policy discussions, tax return preparers must determine, on a case-by-case basis, whether a disclosure or use is in support of *bona fide* research or public policy discussions. For example, public policy discussions would include discussion of the implications of legislative amendments and tax reform proposals.

B. *Limitations on the use and purpose of statistical compilations of data*

One commentator recommended limiting the discretion afforded to tax return preparers to determine appropriate disclosures of statistical compilations. The commentator expressed concern that tax return preparers will disclose more information than is lawfully permissible or even sell data to third parties. This comment was not adopted. The availability of anonymous statistical compilations can assist lawmakers and others in the private and public sectors in discussing, formulating, and implementing sound tax policy. The final regulations sufficiently limit the construction of the statistical compilations to prevent the disclosure of any individual's tax return information. In addition, §301.7216–2(o)(1) specifically prohibits the sale of a statistical compilation of data except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. Finally, there are penalties imposed by sections 7216 and 6713 for the improper disclosure or use of tax return information.

One commentator recommended removing all restrictions on the disclosure or use of anonymous statistical compilations. This comment was not adopted. The purpose of section 7216 and its accompanying regulations is to preserve taxpayer confidentiality by protecting taxpayers from the unauthorized disclosures or uses of sensitive tax return information by tax return preparers. Eliminating all restrictions on the use of statistical compilations would contravene this purpose and could increase opportunities for taxpayer's personal information to be improperly disclosed or misused. In particular, it is possible to craft statistical compilations in a way that allows for the data to be associated with a particular taxpayer.

One commentator recommended that the restriction on the disclosure or use of anonymous statistical information be eliminated to allow for the compilation of statistically anonymous information relating to the dollar amounts of refunds, credits, or deductions. This comment was not adopted. Section 7216 authorizes the IRS and Treasury to promulgate rules regulating how tax return preparers may disclose or use tax return information while ensuring that the taxpayer protection purpose of section 7216 is fulfilled. Eliminating all restrictions on the use of statistical compilations regarding the dollar amounts of refunds, credits, or deductions would provide tax return preparers the unfettered ability to use tax return information. This would undermine the purpose and basic protections of preventing inappropriate disclosure or use of tax return information by tax return preparers afforded by section 7216.

One commentator requested that volunteer income tax assistance programs be exempted from the restrictions on the disclosure or use of statistical compilations for marketing or advertising purposes. This comment was not adopted. Taxpayers who receive volunteer income assistance and taxpayers who receive tax preparation assistance from compensated preparers deserve the same protection of their tax return information. Section 301.7216–2(o) already makes appropriate allowances for a preparer's status as a participant in a volunteer income tax assistance program by allowing for use of statistical compilations in fundraising activities conducted by volunteer return preparation programs and other entities described in section 501(c). As a result, IRS and Treasury believe that the regulations already address the concerns expressed by this commentator.

3. *Comments Relating to §301.7216–2(p) of the Proposed Regulations*

No comments were received in response to §301.7216–2(p) of the proposed regulations, and §301.7216–2(p) is being finalized without change.

4. *Effective date of T.D. 9478*

One commentator questioned the appropriateness of applying §301.7216–2T(o) of the temporary regulations contained in T.D. 9478 with an immediate effective date, stating that one provision of this section is more restrictive than prior guidance (Notice 2009–13, 2009–5 I.R.B. 419) indicated. The commentator requested that the effective date of this particular proposal be made fully prospective and only after regulations are finalized. This comment was not adopted for the following reasons.

By its specific terms, Notice 2009–13 expired on December 31, 2009, while T.D. 9478 is applicable to disclosures or uses of tax return information occurring on or after January 4, 2010. Because there is no conflicting or overlapping period of application of this related guidance, tax return preparers could not have relied upon Notice 2009–13 beyond December 31, 2009. As T.D. 9478 was not applicable until January 4, 2010, there is no retroactive application of the rule contained in that Treasury decision.

Further, Notice 2009–13 requested comments, and comments in response to the notice were taken into account in the drafting and publication of T.D. 9478. As explained in the preamble to T.D. 9478, concerns were expressed regarding the scope of the language used in Notice 2009–13 on this specific issue. The amendments provided in T.D. 9478 are responsive to public comments on and a logical outgrowth of the language in Notice 2009–13.

Finally, the general rule under section 7216 prohibits the disclosure or use of tax return information unless a written consent is obtained or an exception applies. With the expiration of Notice 2009–13 on December 31, 2009, the uses of statistical compilations allowed for in

the notice were no longer permissible. If §301.7216–2T(o) was made effective only upon publication of the final regulations, as the commentator seems to suggest, neither the exceptions provided for in Notice 2009–13 nor those provided for in §301.7216–2T(o) would be applicable after December 2009. The permissible use of statistical compilations without taxpayer consent would be more, not less, restrictive than if §301.7216–2T(o) had not been published as a temporary regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(e) of the Code, the temporary regulations and the proposed regulations preceding these final regulations were published in the **Federal Register** to provide notice and the opportunity to comment. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Skyler K. Bradbury and Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7216–0 is amended by revising the entries for §301.7216–2, paragraphs (n), (o), and (p) to read as follows:

§301.7216–0 Table of contents.

* * * * *

§301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) Lists for solicitation of tax return preparation business.

(o) Producing statistical information in connection with tax return preparation business.

(p) Disclosure or use of information for quality, peer, or conflict reviews.

* * * * *

§301.7216–0T [Removed]

Par. 3. Section 301.7216–0T is removed.

Par. 4. Section 301.7216–2 is amended by revising paragraphs (n), (o), (p), and (s) to read as follows:

§301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) *Lists for solicitation of tax return preparation business.* (1) A tax return preparer, other than a person who is a tax return preparer solely because the person provides auxiliary services as defined in §301.7216–1(b)(2)(iii), may compile and maintain a separate list containing solely items of tax return information. The following items of tax return information are permissible: the names, mailing addresses, e-mail addresses, phone numbers, taxpayer entity classification (including "individual" or the specific type of business entity), and income tax return form number (for example, Form 1040–EZ) of taxpayers whose tax returns the tax return preparer has prepared or processed. The Internal Revenue Service may issue guidance, by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter), describing other types of information that may be included in a list compiled and maintained pursuant to this paragraph. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. Due diligence conducted prior to a proposed sale of a compiler's tax return preparation business is in conjunction with the sale or other disposition of a compiler's tax return preparation business and will not constitute a transfer of the list if conducted pursuant to a written agreement that requires confidentiality of the tax return information disclosed and expressly prohibits the further disclosure or use of the tax return information for any purpose other than that related to the purchase of the tax return preparation business. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business falls under the provisions of this paragraph with respect to the list. The term *list*, as used in this paragraph (n), includes any record or system whereby the types of information expressly authorized for inclusion in a taxpayer list pursuant to the terms of this paragraph (n) are retained. The provisions of this paragraph (n) also apply to the transfer of any records and related papers to which this paragraph (n) applies.

(2) *Examples.* The following examples illustrate this paragraph (n):

Example 1. Preparer A is a tax return preparer as defined by §301.7216–1(b)(2)(i)(A). Preparer A's office is located in southeast Pennsylvania, and Preparer A prepares federal and state income tax returns for taxpayers who live in Pennsylvania, New Jersey, Maryland, and Delaware. Preparer A maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer A provides quarterly state income tax information updates to his

individual taxpayer clients by e-mail or U.S. mail. To ensure that his clients only receive the information updates that are relevant to them, Preparer A uses his list to direct his outreach efforts towards the relevant clients by searching his list to filter it by zip code and income tax return form number (Form 1040 and corresponding state income tax return form number). Preparer A may use the list information in this manner without taxpayer consent because he is providing tax information for educational or informational purposes and is targeting clients based solely upon tax return information that is authorized by this paragraph (n) (by zip code, which is part of a taxpayer's address, and by income tax return form number). Without taxpayer consent, Preparer A also may deliver this information to his clients by e-mail, U.S. mail, or other method of delivery that uses only information authorized by this paragraph (n).

Example 2. Preparer B is a tax return preparer as defined by §301.7216–1(b)(2)(i)(A). Preparer B maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer B provides monthly federal income tax information updates in the form of a newsletter to all of her taxpayer clients by e-mail or U.S. mail. When Preparer B hires a new employee who participates or assists in tax return preparation, she announces that hire in the newsletter for the month that follows the hiring. Each announcement includes a photograph of the new employee, the employee's name, the employee's telephone number, a brief listing of the employee's qualifications, and a brief listing of the employee's employment responsibilities. Preparer B may use the tax return information described in this paragraph (n) in this manner without taxpayer consent because she is providing tax information for educational or informational purposes to provide general federal income tax information updates. Preparer B may include the new employee announcements in the form described because this is considered tax information for informational purposes, provided the announcements do not contain solicitations for non-tax return preparation services. Without taxpayer consent, Preparer B also may deliver this information to her clients by e-mail, U.S. mail, or other method of delivery that uses only information authorized by this paragraph (n).

(o) *Producing statistical information in connection with tax return preparation business.* (1) A tax return preparer may use tax return information, subject to the limitations specified in this paragraph (o), to produce a statistical compilation of data described in §301.7216–1(b)(3)(i)(B). The purpose for and disclosure or use of the statistical compilation requiring data acquired during the tax return preparation process must relate directly to the internal management or support of the tax return preparer's tax return preparation business, or to *bona fide* research or public policy discussions concerning state or federal taxation. A tax return preparer may not disclose the statistical compilation, or any part thereof, to any other person unless disclosure of the statistical compilation is anonymous as to taxpayer identity, does not disclose an aggregate figure containing data from fewer than ten tax returns, and is in direct support of the tax return preparer's tax return preparation business or of *bona fide* research or public policy discussions concerning state or federal taxation. A statistical compilation is anonymous as to taxpayer identity if it is in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. For purposes of this paragraph, marketing and advertising is in direct support of the tax return preparer's tax return preparation business provided the marketing and advertising is not false, misleading, or unduly influential. This paragraph, however, does not authorize the disclosure or use in marketing or advertising of any statistical compilations, or part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous. Disclosures made in support of fundraising activities conducted by volunteer return preparation programs and other organizations described in section 501(c) of the Internal Revenue Code (Code) in direct support of their tax return preparation businesses are not marketing and advertising under this paragraph. A tax return preparer who produces a statistical compilation of data described in §301.7216–1(b)(3)(i)(B) may disclose the compilation to comply with financial accounting or regulatory reporting requirements whether or not the statistical compilation is anonymous as to taxpayer identity or discloses an aggregate figure containing data from fewer than ten tax returns.

(2) A tax return preparer may not sell or exchange for value a statistical compilation of data described in §301.7216–1(b)(3)(i)(B), in whole or in part, except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any statistical compilations of data to which this paragraph applies. A person who acquires a statistical compilation, or a part thereof, pursuant to the operation of this paragraph (o) or in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the compilation.

(3) *Examples.* The following examples illustrate this paragraph (o):

Example 1. Preparer A is a tax return preparer as defined by §301.7216–1(b)(2)(i)(A). In 2009, A used tax return information to produce a statistical compilation of data for both internal management purposes and to support A's tax return preparation business. The statistical compilation included an aggregate figure containing the information that A prepared 32 S corporation tax returns in 2009. In 2010, A decided to embark upon a new marketing campaign emphasizing its experience preparing small business tax returns. In the campaign, A discloses the aggregate figure containing the number of S corporation tax returns prepared in 2009. A's disclosure does not include any information that can be associated with or identify any specific taxpayers. A may disclose the anonymous statistical compilation without taxpayer consent.

Example 2. Preparer B is a tax return preparer as defined by §301.7216–1(b)(2)(i)(A). In 2010, in support of B's tax return preparation business, B wants to advertise that the average tax refund obtained for its clients in 2009 was $2,800. B may not disclose this information because it contains a statistical compilation reflecting average refund amounts.

Example 3. Preparer C is a tax return preparer as defined by §301.7216–1(b)(2)(i)(A) and is a volunteer income tax assistance program. In 2010, in support of C's tax return preparation business, C submits a grant application to a charitable foundation to fund C's operations providing free tax return preparation services to low- and moderate-income families. In support of C's request, C includes anonymous statistical data consisting of aggregated figures containing data from ten or more tax returns showing that, in 2009, C provided services to 500 taxpayers, that 95 percent of the taxpayer population served by C received the Earned Income Tax Credit (EITC), and that the average amount of the EITC received was $3,300. Despite the fact that this information constitutes an average credit amount, C may disclose the information to the charitable foundation because disclosures made in support of fundraising activities conducted by volunteer income tax assistance programs and other organizations described in section 501(c) of the Code in direct support of their tax return preparation business are not considered marketing and advertising for purposes of §301.7216–2(o)(1).

Example 4. Preparer D is a tax return preparer as defined by §301.7216–1(b)(2)(i)(A). In December 2009, D produced an anonymous statistical compilation of tax return information obtained during the 2009 filing season. In 2010, D wants to disclose portions of the anonymous statistical compilation from aggregated figures containing data from ten or more tax returns in connection with the marketing of its financial advisory and asset planning services. D is required to receive taxpayer consent under §301.7216–3 before disclosing the tax return information contained in the anonymous statistical compilation because the disclosure is not being made in support of D's tax return preparation business.

(p) *Disclosure or use of information for quality, peer, or conflict reviews*. (1) The provisions of section 7216(a) and §301.7216–1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Tax return information may also be disclosed to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review, including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel.

(2) The provisions of section 7216(a) and §301.7216–1 shall not apply to any disclosure necessary to accomplish a conflict review. A conflict review is a review undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, or monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, or monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. Tax return information gathered in conducting a conflict review may be used only for purposes of a conflict review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than those responsible for identifying, evaluating, or monitoring legal and ethical conflicts of interest. No tax return information identifying a taxpayer may be disclosed outside of the United States or a territory or possession of the United States unless the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed tax return information.

(3) Any person (including administrative and support personnel) receiving tax return information in connection with a quality, peer, or conflict review is a tax return preparer for purposes of sections 7216(a) and 6713(a). Tax return information disclosed and used for purposes of a quality, peer, or conflict review shall not be disclosed or used for any other purpose.

* * * * *

(s) *Effective/applicability date*. Paragraphs (n), (o), and (p) of this section apply to disclosures or uses of tax return information occurring on or after December 28, 2012. All other paragraphs of this section apply to disclosures or uses of tax return information occurring on or after January 1, 2009.

§301.7216–2T [Removed]

Par. 5. Section 301.7216–2T is removed.

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

Approved December 20, 2012.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 26, 2012, 11:15 a.m., and published in the issue of the Federal Register for December 28, 2012, 77 F.R. 76400)

Part III. Administrative, Procedural, and Miscellaneous

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

Notice 2013–1

ADDITIONAL SETTLEMENTS

Notice 2012–60, 2012–41 I.R.B. 455, provides guidance on federal tax treatment of certain *per capita* payments made to members of Indian tribes. Since publication of Notice 2012–60, six additional tribes — Qawalangin Tribe of Unalaska, Tlingit & Haida Tribes of Alaska, Northwestern Band of Shoshone Indians, Hoopa Valley Tribe, the Ak-Chin Indian Community, and the Oglala Sioux Tribe — have reached tribal trust case settlements with the United States and have been included in the Appendix.

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.

EFFECT ON OTHER DOCUMENTS

Notice 2012–60, 2012–41 I.R.B. 445, is superseded.

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
56. Qawalangin Tribe of Unalaska
57. Tlingit & Haida Tribes of Alaska
58. Northwestern Band of Shoshone Indians
59. Hoopa Valley Tribe
60. Ak-Chin Indian Community
61. Oglala Sioux Tribe

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26 CFR 301.7216–3: Disclosure or use permitted only with the taxpayer's consent.
(Also: Sections 7216, 6713)

Rev. Proc. 2013–14

SECTION 1. PURPOSE

This revenue procedure provides guidance to tax return preparers regarding the format and content of taxpayer consents to disclose and consents to use tax return information with respect to taxpayers filing a return in the Form 1040 series (*e.g.*, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ) under section 301.7216–3 of the Regulations on Procedure and Administration (26 CFR Part 301). This revenue procedure also provides specific requirements for electronic signatures when a taxpayer executes an electronic consent to the disclosure or consent to the use of the taxpayer's tax return information. This revenue procedure modifies and supersedes Revenue Procedure 2008–35, 2008–29 I.R.B. 132, to provide guidance pursuant to section 301.7216–3.

SECTION 2. CHANGES

This revenue procedure modifies the mandatory language required on each taxpayer consent to disclose or consent to use tax return information. This revenue procedure also explains the difference between tax return preparation services (or auxiliary services) and other financial or accounting services. Some taxpayers have expressed confusion regarding whether they needed to complete consent forms to engage a tax return preparer to perform tax return preparation services. The modified mandatory language required in consent forms clarifies that a taxpayer does not need to complete a consent form to engage a tax return preparer to perform only tax return preparation services. To allow a tax return preparer to disclose or use tax return information in providing services other than tax return preparation, however, a taxpayer must complete a consent form as described in this revenue procedure. Sections 5.04(1)(a) and (c) provide the modified language that must be included on each consent to disclose or consent to use tax return information. The examples in section 7 reflect the modified language provided in section 5.04. In addition, a few nonsubstantive changes have been made to the revenue procedure to promote clarity.

SECTION 3. BACKGROUND

.01 In general, section 7216(a) of the Internal Revenue Code imposes criminal penalties on tax return preparers who knowingly or recklessly make unauthorized disclosures or uses of information

furnished in connection with the preparation of an income tax return. A violation of section 7216 is a misdemeanor, with a penalty of up to one year imprisonment or a fine of not more than $1,000, or both, together with the costs of prosecution. Section 7216(b) establishes exceptions to the general rule in section 7216(a) and also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures or uses.

.02 Section 6713(a) prescribes a related civil penalty for unauthorized disclosures or uses of information furnished in connection with the preparation of an income tax return. The penalty for violating section 6713 is $250 for each disclosure or use, not to exceed a total of $10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713.

.03 Section 301.7216–3 provides that, unless section 7216 or § 301.7216–2 specifically permits the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information without obtaining a consent from the taxpayer. Section 301.7216–3(a) provides that consent must be knowing and voluntary. Section 301.7216–3(a)(3)(i) prescribes the form and content requirements that all consents to disclose or consents to use must include. Section 301.7216–3(b) provides timing requirements and other limitations upon consents to disclose or consents to use tax return information. Section 301.7216–3(b)(4) provides a limitation upon consents to disclose a taxpayer's social security number to a tax return preparer located outside of the United States.

.04 Section 301.7216–3(a)(3)(ii) provides that the Secretary may, by publication in the Internal Revenue Bulletin, prescribe additional requirements for tax return preparers regarding the format and content of consents to disclose and consents to use tax return information with respect to taxpayers filing a return in the Form 1040 series, as well as the requirements for a valid signature on an electronic consent under section 7216.

Section 301.7216–3(b)(4)(ii) provides that the Secretary may require, by publication in the Internal Revenue Bulletin, additional consent format and content requirements for purposes of consents to disclose a taxpayer's social security number. This revenue procedure defines an "adequate data protection safeguard" and describes the requirements of an adequate data protection safeguard for purposes of removing the limitation upon consents to disclose a taxpayer's social security number to a tax return preparer located outside of the United States.

SECTION 4. SCOPE

This revenue procedure applies to all tax return preparers, as defined in § 301.7216–1(b)(2), who seek consent to disclose or consent to use tax return information pursuant to § 301.7216–3 with respect to taxpayers who file a return in the Form 1040 series. Taxpayers who are not filers of returns in the Form 1040 series may use language prescribed in this revenue procedure or consents whose formats and content do not conform to this revenue procedure as long as the consents otherwise meet the requirements of Treas. Reg. § 301.7216–3.

SECTION 5. FORM AND CONTENT OF A CONSENT TO DISCLOSE OR A CONSENT TO USE FORM 1040 TAX RETURN INFORMATION

.01 Separate Written Document. Except as provided by § 301.7216–3(c)(1) (special rule for multiple disclosures or multiple uses within a single consent form), and described in section 5.05, below, a taxpayer's consent to each separate disclosure or separate use of tax return information must be contained on a separate written document, which can be furnished on paper or electronically. For example, the separate written document may be provided as an attachment to an engagement letter furnished to the taxpayer.

.02 A consent furnished to the taxpayer on paper must be provided on one or more sheets of 8½ inch by 11 inch or larger paper. All of the text on each sheet of paper must pertain solely to the disclosure or use the consent authorizes, and the sheet or sheets, together, must contain all the elements described in section 5.04 and, if applicable, comply with section 5.06. All of the text on each sheet of paper must also be in at least 12-point type (no more than 12 characters per inch).

.03 A consent furnished in electronic form must be provided on one or more computer screens. All of the text placed by the preparer on each screen must pertain solely to the disclosure or use of tax return information authorized by the consent, except for computer navigation tools. The text of the consent must meet the following specifications: the size of the text must be at least the same size as, or larger than, the normal or standard body text used by the website or software package for direction, communications, or instructions and there must be sufficient contrast between the text and background colors. In addition, each screen or screens, together, must:

(1) contain all the elements described in section 5.04 and, if applicable, comply with section 5.06,

(2) be able to be signed as required by section 6 and dated by the taxpayer, and

(3) be able to be formatted in a readable and printer-friendly manner.

.04 Requirements for every consent. In addition to the requirements provided in § 301.7216–3, consents to disclose or use Form 1040 series tax return information must satisfy the following requirements:

(1) Mandatory statements in the consent. The following statements must be included in a consent under the circumstances described below, except that a tax return preparer may substitute the preparer's name where "we" or "our" is used.

(a) Consent to disclose tax return information in a context other than tax return preparation or auxiliary services. Unless a tax return preparer is obtaining a taxpayer's consent to disclose the taxpayer's tax return information to another tax return preparer to perform services that assist in, or to provide auxiliary services (as defined in § 301.7216–1(b)(2)(iii)) in connection with, the preparation of the taxpayer's tax return, any consent to disclose tax return information must contain the following statements in the following sequence:

> Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

(b) Consent to disclose tax return information in tax return preparation or auxiliary services context. If a tax return preparer is otherwise required to obtain a taxpayer's consent to disclose the taxpayer's tax return information to another tax return preparer to perform services that assist in the preparation of, or to provide auxiliary services (as defined in § 301.7216–1(b)(2)(iii)) in connection with, the preparation of the taxpayer's tax return, any consent to disclose tax return information must contain the following statements in the following sequence:

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than those related to the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form. Because our ability to disclose your tax return information to another tax return preparer affects the tax return preparation service(s) that we provide to you and its (their) cost, we may decline to provide you with tax return preparation services or change the terms (including the cost) of the tax return preparation services that we provide to you if you do not sign this form. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

(c) Consent to use. All consents to use tax return information must contain the following statements in the following sequence:

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot use your tax return information for purposes other than the preparation and filing of your tax return without your consent.

You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. Your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

(d) All consents must contain the following statement:

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1–800–366–4484, or by email at *complaints@tigta.treas.gov*.

(e) Mandatory statement in any consent to disclose tax return information to a tax return preparer located outside of the United States. If a tax return preparer to whom the tax return information is to be disclosed is located outside of the United States, the taxpayer's consent under § 301.7216–3 is required prior to any disclosure. *See* §§ 301.7216–3(a)(3)(i)(D), 301.7216–2(c) and (d).

(i) If the tax return information to be disclosed does not include the taxpayer's social security number or if the social security number is fully masked or otherwise redacted, consents for disclosure of tax return information to a tax return preparer outside of the United States must contain the following statement:

This consent to disclose may result in your tax return information being disclosed to a tax return preparer located outside the United States.

(ii) If the tax return information to be disclosed includes the taxpayer's social security number or if the social security number is not fully masked or otherwise redacted, pursuant to the limitations of § 301.7216–3(b)(4) and section 5.07, consents for disclosure of the taxpayer's tax return information that includes a social security number to a tax return preparer outside of the United States must contain the following statement:

This consent to disclose may result in your tax return information being disclosed to a tax return preparer located outside the United States, *including your personally identifiable information such as your Social Security Number ("SSN")*. Both the tax return preparer in the United States that will disclose your SSN and the tax return preparer located outside the United States that will receive your SSN maintain an adequate data protection safeguard (as required by the regulations under 26 U.S.C. section 7216) to protect privacy and prevent unauthorized access of tax return information. If you consent to the disclosure of your tax return information, federal agencies may not be able to enforce United States laws that protect the privacy of your tax return information against a tax return preparer located outside of the United States to whom the information is disclosed.

(2) Affirmative consent. All consents must require the taxpayer's affirmative consent to a tax return preparer's disclosure or use of tax return information. A consent that requires the taxpayer to remove or deselect disclosures or uses that the taxpayer does not wish to be made (*i.e.*, an "opt-out" consent) is not permitted.

(3) Signature. All consents to disclose or use tax return information must be signed by the taxpayer.

(a) For consents on paper, the taxpayer's consent to a disclosure or use must contain the taxpayer's handwritten signature.

(b) For electronic consents, a taxpayer must sign the consent by any method prescribed in section 6, below.

(4) Incomplete consents. A tax return preparer shall not alter a consent form after the taxpayer has signed the document. Accordingly, a tax return preparer shall not present a taxpayer with a consent form containing blank spaces for the purpose of completing the spaces after the taxpayer has signed the document.

.05 Special rule for multiple disclosures within a single consent form or multiple uses within a single consent form. Section 301.7216–3(c)(1) provides that a taxpayer

may consent to multiple uses within the same written document or multiple disclosures within the same written document. Disclosure consents and use consents must be provided in separate documents. Multiple disclosure consents and multiple use consents must provide the taxpayer with the opportunity, within the separate written document, to affirmatively select each separate disclosure or use. Further, the taxpayer must be provided the information in section 5.04 for each separate disclosure or use. The mandatory statements required in section 5.04(1) relating to disclosure or use need only be stated once in a multiple disclosure or multiple use consent.

.06 Disclosure of entire return. If, under § 301.7216–3(c)(2), a consent authorizes the disclosure of a copy of the taxpayer's entire tax return or all information contained within a return, the consent must provide that the taxpayer has the ability to request a more limited disclosure of tax return information as the taxpayer may direct.

.07 Adequate data protection safeguard. Pursuant to § 301.7216–3(b)(4), a tax return preparer located within the United States, including any territory or possession of the United States, may disclose a taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States with the taxpayer's consent only when both the tax return preparer located within the United States and the tax return preparer located outside of the United States maintain an adequate data protection safeguard at the time the taxpayer's consent is obtained and when making the disclosure. An adequate data protection safeguard is a management-approved and implemented security program, policy, and practice that includes administrative, technical, and physical safeguards to protect tax return information from misuse, unauthorized access, or disclosure and that meets or conforms to one of the following privacy or data security frameworks:

(1) The United States Department of Commerce "safe harbor" framework for data protection (or a successor program);

(2) A foreign law data protection safeguard that includes a security component (*e.g.*, the European Commission's Directive on Data Protection);

(3) A framework that complies with the requirements of a financial or similar industry-specific standard that is generally accepted as best practices for technology and security related to that industry (*e.g.*, the BITS, Financial Services Roundtable, Financial Institution Shared Assessment Program);

(4) The requirements of the AICPA/CICA Privacy Framework;

(5) The requirements of the most recent version of IRS Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies and Entities*; or

(6) Any other data security framework that provides the same level of privacy protection as contemplated by one or more of the frameworks described in (1) through (5).

SECTION 6. ELECTRONIC SIGNATURES

.01 If a taxpayer furnishes consent to disclose or consent to use tax return information electronically, the taxpayer must furnish the tax return preparer with an electronic signature that will verify that the taxpayer consented to the disclosure or use. The regulations under § 301.7216–3(a) require that the consent be knowing and voluntary. Therefore, for an electronic consent to be valid, it must be furnished in a manner that ensures affirmative, knowing consent of the taxpayer to each disclosure or use.

.02 A tax return preparer seeking to obtain a taxpayer's consent to the disclosure or consent to the use of tax return information electronically must obtain the taxpayer's signature on the consent in one of the following manners:

(a) Assign a personal identification number (PIN) that is at least 5 characters long to the taxpayer. To consent to the disclosure or consent to the use of the taxpayer's tax return information, the taxpayer may type in the pre-assigned PIN as the taxpayer's signature authorizing the disclosure or use. A PIN may not be automatically furnished by the software so that the taxpayer only has to click a button for consent to be furnished. The taxpayer must affirmatively enter the PIN for the electronic signature to be valid;

(b) Have the taxpayer type in the taxpayer's name and then hit "enter" to authorize the consent. The software must not automatically furnish the taxpayer's name so that the taxpayer only has to click a button to consent. The taxpayer must affirmatively type the taxpayer's name for the electronic consent to be valid; or

(c) Any other manner in which the taxpayer affirmatively enters 5 or more characters unique to the taxpayer that the tax return preparer uses to verify the taxpayer's identity. For example, entry of a response to a question regarding a shared secret could be the type of information by which the taxpayer authorizes disclosure or use of tax return information.

SECTION 7. EXAMPLES

.01 The application of this revenue procedure is illustrated by the following examples:

(1) *Example 1.* Preparer P offers tax preparation services over the Internet. P wishes to use information the taxpayer provides during tax preparation of the taxpayer's Form 1040 to generate targeted banner advertisements (*i.e.*, electronic advertisements appearing on the computer screen based on the taxpayer's tax return information). In the course of advertising services and products, P also wishes to disclose to other third parties the information that the taxpayer provides.

(a) P posts, in pertinent part, the following consent on the computer screen for taxpayers to indicate approval. If a taxpayer does not indicate approval, the tax return preparation software does not permit the taxpayer to use the software.

PRIVACY STATEMENT

Your privacy is very important to us at P. We are providing this statement to inform you about the types of information we collect from you, and how we may disclose or use that information in connection with the services we provide. This Privacy Statement describes the privacy practices of our company as required by applicable laws. . . . During the course of providing our services to you, we may offer you various other services that may be of interest to you based on our determination of your needs through analysis of your data. Your use of the services we offer constitutes a consent to our disclosure of tax information to the service providers. If at any time you wish to limit your receipt of promotional offers based upon information you provide, you may call us at the following. . . .

(b) Beneath this Privacy Statement, the following acknowledgment line appears next to two button images stating "yes" and "no:"

"I have read the Privacy Statement and agree to it by clicking here."

(c) If the taxpayer clicks "no," a message appears on the screen informing the taxpayer that tax return preparation will not proceed without the taxpayer agreeing to the company's Privacy Statement.

(d) P has failed to comply with the requirements of § 301.7216–3 and this revenue procedure. P has attempted to obtain consent from the taxpayer by making the use of the program (*i.e.*, the provision of tax return preparation services) contingent on the tax-

payer's consent to P's disclosure and use of the taxpayer's tax return information for purposes other than tax preparation (*e.g.*, for use in displaying targeted banner advertisement). Thus, the consent is not voluntary, as required by § 301.7216–3(a). P has also failed to identify the tax return information that it will disclose or use, as required by § 301.7216–3(a)(3)(C); to identify the purposes of the disclosures or uses, as required by section § 301.7216–3(a)(3)(B); and, to the extent that P intends to disclose the entire return based on the consent, P's consent form has not provided that the taxpayer has the ability to request a more limited disclosure of tax return information as the taxpayer may direct as required by section 5.06. The single document attempts to have the taxpayer consent to both disclosures and uses, in violation of section 5.05. P has not used the mandatory statements required by section 5.04(1). The consent is not signed by the taxpayer because P has not provided a means for the taxpayer to electronically sign the consent in a form authorized by section 6. Finally, the consent is not dated as required by section 5.03(2).

(2) *Example 2*. Preparer Q offers tax preparation services over the Internet and wishes to use targeted banner advertisements during tax return preparation. Q contracts with Bank A regarding the advertisement of Individual Retirement Accounts (IRAs). Preparer Q displays advertisements to the taxpayer only if the taxpayer's tax return information indicates that the services are relevant to the taxpayer (*e.g.*, targeted banner advertisements). A taxpayer using Q's software must enter a password to begin the process of preparing a return.

(a) Before the taxpayer starts providing tax return information, the following screen appears on Q's tax preparation program.

CONSENT TO USE OF TAX RETURN INFORMATION

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot use your tax return information for purposes other than the preparation and filing of your tax return without your consent.

You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. Your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

For your convenience, Q has entered into arrangements with certain banks regarding the provision of Individual Retirement Accounts (IRAs). To determine whether this service may be of interest to you, Q will need to use your tax return information.

If you would like Q to use your tax return information to determine whether this service is relevant to you while we are preparing your return, please check the corresponding box, provide the information requested below, and sign and date this consent to the use of your tax return information.

☐ I, [INSERT NAME] authorize Q to use the information I provide to Q during the preparation of my tax return for 2006 to determine whether to offer me an opportunity to invest in an IRA.

Signature: [INSERT SIGNATURE AS PRESCRIBED UNDER SECTION 6]

Date: [INSERT DATE]

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1–800–366–4484, or by email at *complaints@tigta.treas.gov*.

(b) If the taxpayer selects the consent above, the taxpayer is directed to print the screen. Later, after the taxpayer has entered data to prepare his or her 2006 tax return, the following screen is displayed:

CONSENT TO DISCLOSURE OF TAX RETURN INFORMATION

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form to engage our tax return preparation services. If we obtain your signature on this form by conditioning our tax return preparation services on your consent, your consent will not be valid. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

You have indicated that you are interested in obtaining information on IRAs. To provide you with this information, Q must disclose your tax return information, as indicated below, to the bank that provides this service.

If you would like Q to disclose your tax return information to the bank providing this service, please check the corresponding box for the service in which you are interested, provide the information requested below, and sign and date your consent to the disclosure of your tax return information.

☐ I, [INSERT NAME], authorize Q to disclose to Bank A that portion of my tax return information for 2006 that is necessary for Bank A to contact me and provide information on obtaining an IRA or altering my contribution to an IRA for 2006.

Signature: [INSERT SIGNATURE AS PRESCRIBED UNDER SECTION 6]

Date: [INSERT DATE]

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1–800–366–4484, or by email at *complaints@tigta.treas.gov*.

If the taxpayer consents to the disclosure of the tax return information using the screen above, the taxpayer is directed to print the screen. Q will then transmit only that portion of the taxpayer's tax return information for 2006 that is necessary for the bank authorized in the consent, Bank A, to provide the service.

(c) These two consent forms, above, satisfy the requirements of § 301.7216–3(c) and this revenue procedure for the disclosure or use of the information provided by the taxpayer for the specific purposes stated in the consent forms.

(3) *Example 3*. Large corporation C employs 200 expatriated employees who work in Belgium. Preparer R, located in the United States, prepares individual income tax returns for C's expatriated workers pursuant to a corporate plan for executive tax return preparation. Preparer R is affiliated with Preparer F, located in Belgium. Pursuant to the corporate plan for executive tax return preparation, Preparer R plans to provide the expatriated employees' tax return information, including the expatriated employees' SSNs, located on Preparer R's US based data servers to Preparer F who then plans to meet with the expatriated employees to prepare those employees' 2008 individual income tax returns. Preparer R obtains information electronically from various sources in anticipation of providing the information to Preparer F. Preparer R developed, adopted, and incorporated into its operations a data privacy program that meets the requirements of the AICPA/CICA Privacy Framework. Preparer F also developed, adopted, and incorporated into its operations a data privacy program, which is subject to the European Commission's Directive on Data Protection. The data privacy programs adopted by Preparer R and Preparer F are in operation at the time all consents to disclose are obtained by Preparer R and disclosures are made by Preparer R to Preparer F.

(a) Before transmitting or sending any expatriated employee's SSN to Preparer F, Preparer R provides the expatriated employee (taxpayer) with the following document.

CONSENT TO DISCLOSURE OF TAX RETURN INFORMATION

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose your tax return information to third parties for purposes other than the preparation and filing of your tax return and, in certain limited circumstances, for purposes involving tax return preparation without your consent. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form. Because our ability to disclose your tax return information to another tax return preparer affects the tax return preparation service(s) that we provide to you and its (their) cost, we may decline to provide you with tax return preparation services or change the terms (including the cost) of the tax return preparation services that we provide to you if you do not sign this form. If you agree to the disclosure of your tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year from the date of signature.

This consent to disclose may result in your tax return information being disclosed to a tax return preparer located outside the United States, *including your personally identifiable information such as your Social Security Number ("SSN").* Both the tax return preparer in the United States that will disclose your SSN and the tax return preparer located outside the United States that will receive your SSN maintain an adequate data protection safeguard (as required by the regulations under 26 U.S.C. Section 7216) to protect privacy and prevent unauthorized access of tax return information. If you consent to the disclosure of your tax return information, Federal agencies may not be able to enforce US laws that protect the privacy of your tax return information against a tax return preparer located outside of the US to which the information is disclosed.

If you agree to allow Preparer R to disclose your tax return information, including your SSN, to Preparer F for purposes of providing assistance in the preparation of your 2008 individual income tax return, please check the box below, provide the information requested below, and sign and date your consent to the disclosure of your tax return information.

☐ I, [INSERT NAME], authorize Preparer R to disclose to Preparer F my tax return information, including my SSN, to allow Preparer F to assist in the preparation of my 2008 individual income tax return.

Signature:

Date: [INSERT DATE]

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law or without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1–800–366–4484, or by email *at complaints@tigta.treas.gov*.

The taxpayer provides consent by checking the box and signing and dating the consent form. Preparer R then provides a copy of the signed and dated consent form to the taxpayer, and then transmits the taxpayer's tax return information to Preparer F for processing of taxpayer's 2008 individual income tax return.

(b) The consent above satisfies the requirements of section 301.7216–3 and this revenue procedure for the disclosure of the information provided by the taxpayer for the specific purpose stated in the consent form.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2008–35, 2008–29 I.R.B. 132, is modified and superseded.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective on January 14, 2013. Prior to that date, tax return preparers may use the mandatory language provided in section 5.04 of this revenue procedure or the language provided in section 4.04 of Rev. Proc. 2008–35. Any consent obtained on or after January 14, 2013 must contain the mandatory language provided in section 5.04 of this revenue procedure.

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are Skyler Bradbury and Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Emily M. Lesniak at (202) 622–4910 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws

REG–141066–09

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations provide comprehensive guidance for the award program authorized under Internal Revenue Code (Code) section 7623, as amended. The regulations provide guidance on submitting information regarding underpayments of tax or violations of the internal revenue laws and filing claims for award, as well as on the administrative proceedings applicable to claims for award under section 7623. The regulations also provide guidance on the determination and payment of awards, and provide definitions of key terms used in section 7623. Finally, the regulations confirm that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings. The regulations provide needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623. This document also provides notice of a request for a public hearing on the proposed regulations.

DATES: Electronic or written comments and requests for a public hearing must be received by February 19, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–141066–09), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–141066–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–141066–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Meghan M. Howard, at (202) 622–7950; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 406 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922), enacted on December 20, 2006, amended section 7623 of the Code on the payment of awards to certain persons who provide information to the Internal Revenue Service relating to the detection of underpayments of tax and violations of the internal revenue laws. Section 406 redesignated the existing statutory authority to pay awards at the discretion of the Secretary of the Treasury as section 7623(a), and it added a new provision regarding awards to certain individuals as section 7623(b). Generally, section 7623(b) provides that qualifying individuals will receive an award of at least 15 percent, but not more than 30 percent, of the collected proceeds resulting from the action with which the Secretary proceeded based on the information provided to the IRS by the individual. Section 406 also addressed several award program administrative issues and established a Whistleblower Office within the IRS, which operates at the direction of the Commissioner, analyzes information received under section 7623, as amended, and either investigates the information itself or assigns the investigation to the appropriate IRS office.

In Notice 2008–4, 2008–1 C.B. 253 (January 14, 2008) (see §601.601(d)(2)(ii)(*b*) of this chapter), the IRS provided guidance on filing claims for award under section 7623, as amended. In the notice, the IRS recognized that the award program authorized by section 7623(a) had been previously implemented through regulations appearing at §301.7623–1 of the Procedure and Administration Regulations. The Internal Revenue Manual (IRM) provided additional guidance to IRS officers and employees on the award program authorized by section 7623(a). The notice provided that the IRS would generally continue to follow section 301.7623–1 and the IRM provisions for claims for award within the scope of section 7623(a), subject to certain exceptions listed in the notice. The notice also provided, however, that the regulations would not apply to the new award program authorized under section 7623(b). Instead, the notice provided interim guidance applicable to claims for award submitted under section 7623(b).

On March 25, 2008, the Treasury Department (Treasury) and the IRS published Temp. Treas. Reg. §301.6103(n)–2T, and corresponding proposed regulations, describing the circumstances and process in and by which officers and employees of the Treasury may disclose return information to whistleblowers (and their legal representatives, if any) in connection with written contracts for services relating to the detection of violations of the internal revenue laws or related statutes. Under these regulations, whistleblowers and legal representatives who receive return information are subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of return information. The Treasury and the IRS finalized the proposed regulations on March 15, 2011 (T.D. 9516, 2011–13 I.R.B. 575).

In December 2008, the IRS revised IRM Part 25.2.2, updating policies and procedures concerning the handling of information, processing of claims for awards, and payment of awards under section 7623, as amended. The IRS also redelegated the authority to approve awards to the Director of the Whistleblower Office. In July 2010, the IRS further revised IRM Part 25.2.2 to provide detailed instructions to IRS officials and employees on the computation and payment of awards under section 7623 and to describe the administrative procedures applicable to

claims for award under section 7623(b). The revised IRM introduced many guidance elements that are developed in these proposed regulations, including definitions of key terms, the whistleblower administrative proceedings, the fixed percentage award framework and criteria for making award determinations, and rules on handling multiple and joint claimants.

On January 18, 2011, Treasury and the IRS published proposed regulations (REG–131151–10, 2011–8 I.R.B. 519) clarifying the definitions of the terms *proceeds of amounts collected* and *collected proceeds* for purposes of section 7623 and providing that the provisions of existing §301.7623–1(a), concerning refund prevention claims, apply to claims under both section 7623(a) and section 7623(b). The proposed regulations further provided that the reduction of an overpayment credit balance constitutes proceeds of amounts collected and collected proceeds for purposes of section 7623. The Treasury and the IRS finalized the proposed regulations on February 22, 2012 (T.D. 9580, 2012–16 I.R.B. 801).

Explanation of Provisions

The purpose of these regulations is to provide comprehensive guidance for the award program authorized under section 7623, as amended. Accordingly, these regulations provide guidance on issues relating to the award program from the filing of a claim to the payment of an award, focusing on three major elements of the program: (i) the submission of information and filing of claims for award; (ii) the whistleblower administrative proceedings applicable to claims for award under section 7623; and (iii) the computational determination and payment of awards. These proposed regulations also provide definitions of key terms under section 7623 and provide that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings.

These proposed rules apply generally to claims for award under both section 7623(a) and section 7623(b), unless otherwise stated. Nonetheless, while the Whistleblower Office will, for example, conduct whistleblower administrative proceedings pursuant to the proposed rules of §301.7623–3 for claims for award under both section 7623(a) and section 7623(b), the process applicable to claims under section 7623(a) differs from that applicable to claims under section 7623(b). The differences reflect the clear distinction the statute draws between awards under section 7623(a) and section 7623(b) and will avoid placing a heavy administrative burden on the IRS.

Submitting Information and Filing Claims for Award

Section 301.7623–1 of these proposed rules provides guidance on submitting information to the IRS and filing claims for award with the Whistleblower Office. These rules are intended to clarify the process individuals should follow to be eligible to receive awards under section 7623. The proposed rules, in large part, track the rules that Treasury and the IRS have previously provided, as set forth in the existing regulations, Notice 2008–4, and the IRM. This includes, for example, the general information that individuals should submit to claim awards and the descriptions of the type of specific and credible information regarding taxpayers that should be submitted. Most notably, an individual submitting a claim should identify a person and describe and document the facts supporting the claimant's belief that the person owes taxes or violated the tax laws. The proposed rules clarify that the IRS will consider an individual who identifies a pass-through entity as having identified the taxpayers with direct or indirect interests in the entity. Furthermore, the proposed rules provide that if an individual identifies a member of a firm who promoted another identified person's participation in an identified transaction, then the IRS will consider the individual as having identified both the firm and all the other members of the firm. These clarifying provisions complement the proposed rules' definition of the term related action.

The proposed rules also include eligibility requirements for filing claims for award and a list of ineligible claimants. The list of ineligible claimants restates the list published in Notice 2008–4 in its entirety. For example, the proposed rules provide that individuals who are or were required by Federal law or regulation to disclose information are not eligible to file claims for award based on the information.

To enable the IRS to administer the award program, these proposed regulations require individuals to file formal claims for award. The proposed rules provide a process for perfecting incomplete claims for award and permit claimants to perfect and resubmit deficient claims after they are rejected by the Whistleblower Office. Finally, the IRS is considering issues relating to the electronic filing of claims for award, which may be addressed in other published guidance.

The proposed rules also reaffirm the practice of Treasury and the IRS to safeguard the identity of individuals who submit information under section 7623 and these proposed regulations whenever possible. The informant privilege allows the Government to withhold the identity of a person that provides information about violations of law to those charged with enforcing the law. The informant privilege is held by the Government, not the informant, and is not an absolute privilege. There may be instances when, after careful deliberation and high-level IRS approval, the disclosure of the identity of an informant may be determined to be in the best interests of the Government. For example, an informant's identity will have to be revealed when a claimant is needed as a witness in a case in litigation. The IRS will, however, make every effort to notify an informant before disclosing the informant's identity.

Comments are specifically requested on:

(1) The list of ineligible claimants provided in paragraph (b)(2) of §301.7623–1 of these proposed regulations and whether other identifiable groups of individuals should be treated as ineligible to file claims for award.

(2) Whether electronic claim filing would be appropriate and beneficial to claimants, and, if so, what features should be included in an electronic claim filing system.

Definitions of Key Terms

Section 301.7623–2 of these proposed regulations defines several key terms for purposes of determining awards under section 7623 and the proposed regulations. Two other key terms, *planned and*

initiated and *final determination of tax*, are described and defined, respectively, in §301.7623–4 of these proposed regulations. The definitions are intended to facilitate the IRS's administration of the award program in a manner that is consistent with the statutory language. As described below, several of the definitions, including the definition of the terms *proceeds based on*, *related action*, and *collected proceeds*, build on definitions contained in Notice 2008–4, TD 9580, and the IRM, while other definitions are new.

Generally, section 7623(b) provides that if the Secretary proceeds with an administrative or judicial action (including any related actions) based on the information provided by the individual, then the individual will receive an award from the collected proceeds resulting from the actions. The definition of the term *proceeds based on* contained in these proposed regulations reflects the ways in which information provided to the IRS may ultimately result in an award under that standard. Further, the definition reflects the requirement, under Section 406 of the 2006 Act, that the IRS must analyze and investigate information received under section 7623(b) by providing that the IRS cannot, for purposes of paying an award under section 7623, proceed based on information without taking some action beyond simply analyzing or investigating the information. The definition provides that the IRS proceeds based on the information provided only when the IRS initiates a new action that it would not have initiated, expands the scope of an ongoing action that it would not have expanded, or continues to pursue an ongoing action that it would not have continued but for the information provided.

The definition of the term *related action* contained in these proposed regulations clarifies which actions may be included for purposes of computing collected proceeds by requiring a clear link between the original action and the other, related action(s). To enable the IRS to administer the award program and to strike an appropriate balance between the individual's substantial contribution and the IRS's independent administration of the tax laws, this clear link requires: (i) a direct relationship between the person identified in the information provided and subject to the original action and the person(s) subject to the other action(s); and (ii) a substantial similarity between the specific facts contained in the information provided and the relevant facts of the other action(s). Consistent with the statutory language, this conjunctive test excludes from the definition of related action actions that are merely factually similar to the original action, for example, actions against unidentified taxpayers that merely engaged in substantially similar transactions to the transaction identified in the information provided. The direct relationship test of the definition's first prong amounts to a one-step rule: the taxpayer subject to the related action can be no more than one step removed — in terms of identification by the IRS — from a taxpayer identified in the information provided. For example, under the proposed rules, if the information provided identifies a party to a transaction and the facts relevant to the transaction, then an action against an unidentified individual or firm that promoted the identified person's participation in the transaction may be a related action. An action against another client of the unidentified promoter, however, is not a related action, regardless of whether the other client engaged in a substantially similar transaction or whether the information provided could be said to have initiated events that led to all the actions. Similarly, if the information provided identifies a party to a particular transaction and the facts relevant to the transaction, then an action against a second, unidentified party to the same transaction may be a related action. An action against another unidentified person that promoted only the second, unidentified party's participation in the transaction, however, is not a related action.

The definition of *collected proceeds* contained in these proposed regulations builds on the definition contained in the final regulations published on February 22, 2012 (TD 9580). The definition restates the rule from those final regulations that collected proceeds include: tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; amounts collected prior to receipt of the information provided if the information results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

Based on the IRS's experience in administering the award program since the issuance of the final regulations and on stakeholder input on those regulations, the proposed regulations' definition of collected proceeds also addresses refund netting and the treatment of tax attributes generally, which include net operating losses (NOLs). The proposed regulations provide that if any portion of a claim for refund that is substantively unrelated to the information provided is (1) allowed and (2) used to satisfy a tax liability attributable to the information provided instead of refunded to the taxpayer, then the allowed but non-refunded amount constitutes collected proceeds. As to the treatment of tax attributes such as NOLs, the proposed regulations provide a computational rule that reflects the discussion contained in the preamble to T.D. 9580. There, Treasury and the IRS noted that tax attributes such as NOLs do not represent amounts credited to the taxpayer's account that are directly available to satisfy current or future tax liabilities or that can be refunded. Rather, tax attributes such as NOLs are component elements of a taxpayer's liability. The disallowance of an NOL claimed by a taxpayer may affect the taxpayer's liability and, in the context of a whistleblower claim, may result in collected proceeds.

To enable the IRS to administer the award program, the proposed regulations' computational rule provides that, after there has been a final determination of tax, the IRS will compute the amount of collected proceeds taking into account all information known with respect to the taxpayer's account (including all tax attributes such as NOLs). For example: a taxpayer reports an NOL of $10 million for 2009 and a whistleblower's information results in a reduction of the NOL to $5 million. If the NOL is unused as of the date the IRS computes the amount of collected proceeds, then there are no collected proceeds. If, however, the 2009 NOL was partially carried back to 2008, initially generating a $3 million refund, and the whistleblower's information reduced the carryback amount, resulting in a $1.5 million reduction in the refund for 2008, then the amount of the erroneous refund recovered and collected would be collected

proceeds. The proposed regulations' definition of collected proceeds, therefore, does not refer explicitly to NOLs, tax credits, or any other tax attributes that may factor into the computation of a taxpayer's liability. Furthermore, the proposed regulations' computational rule does not attempt to assign a present value to these attributes, given that whether, when, or to what extent they may affect a taxpayer's liability or the amount of collected proceeds cannot be determined in advance of their actual use. Nor does the computational rule require the IRS to continue tracking these taxpayers, who may not be under examination, and attributes into future years, given the significant costs and heavy administrative burden that would be required.

Consistent with provisions in the IRM, these proposed regulations provide that amounts recovered under the provisions of non-Title 26 laws do not constitute collected proceeds, because the plain language of section 7623 authorizes awards for detecting "underpayments of tax" and violations of the internal revenue laws. The internal revenue laws are contained in Title 26, Internal Revenue Code and guidance issued under that title. Although the IRS may collect penalties for violations of Title 31, Money and Finance, and seize property under Title 18, Crimes and Criminal Procedure, those penalties and seizures do not relate to "underpayments of tax," may be imposed independently of whether a tax underpayment occurs, and are not related to violations of the internal revenue laws under Title 26. For example, the IRS may collect penalties for failure to file Form 90–22.1, "*Report of Foreign Bank and Financial Accounts*" (FBAR), which is an information reporting requirement under Title 31 the violation of which does not necessarily result in an underpayment of tax. As a result, FBAR penalties do not constitute collected proceeds. Moreover, sections 5323(a) and 9703(a) of Title 31 provide independent authority, separate and apart from section 7623, for the payment of rewards for information relating to certain violations of Title 31 or Title 18.

These proposed regulations also provide that criminal fines that must be deposited into the Victims of Crime Fund do not constitute collected proceeds. Under the Victims of Crimes Act of 1984, criminal fines that are imposed on a defendant by a district court are deposited into the Victims of Crime Fund. See 42 U.S.C. §10601(b)(1). Criminal fines imposed for Title 26 offenses are not exempt from this requirement. The fines imposed in criminal tax cases that are deposited into the Victims of Crime Fund are not available to the Secretary to pay awards under section 7623. These exclusions were previously explained in the preamble to T.D. 9580 and are further clarified in the text of these proposed regulations. Restitution ordered by a court to the IRS, however, is collected by the IRS as a tax and, therefore, is encompassed in the definition of collected proceeds.

Finally, these proposed regulations provide a rule for determining collected proceeds in cases in which the IRS does not collect the full amount of the assessed liabilities. Pursuant to this rule, collected proceeds, for purposes of paying an award under section 7623, are determined on a pro rata basis based on the ratio that adjustments attributable to the information provided bear against the total adjustments.

Section 301.7623–2 of these proposed regulations also defines the terms *action*, *administrative action*, *judicial action*, *amount in dispute*, and *gross income*.

Comments are specifically requested on:

(1) Each of the key terms defined in this section.

(2) Whether and how the IRS could determine any amount of collected proceeds that arise as a result of a taxpayer's use of tax attributes such as NOLs after the final determination of tax and the computation of collected proceeds, as provided in the proposed regulations.

Whistleblower Administrative Proceedings

Section 301.7623–3 of these proposed regulations describes the administrative proceedings applicable to claims for award under both section 7623(a) and section 7623(b). For purposes of applying these procedures, the IRS may rely on the claimant's description of the amount owed by the taxpayer(s). The IRS may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the $2 million threshold of section 7623(b)(5)(B), but the actual amount in dispute is above the threshold).

Administrative proceedings for awards paid under section 7623(a)

In cases under section 7623(a), these proposed regulations provide that the Whistleblower Office will send a preliminary award recommendation letter to the claimant. Sending this letter marks the beginning of the whistleblower administrative proceeding. The claimant will then have 30 days within which to provide comments to the Whistleblower Office. This approach is intended to provide claimants under section 7623(a) with an opportunity to participate in the award process, both to add transparency to the proceeding and to assist the Whistleblower Office in considering all potentially-relevant information in paying awards under section 7623(a), even though those awards are not subject to Tax Court review.

Administrative proceedings for awards paid under section 7623(b)

In cases in which the Whistleblower Office will determine an award under section 7623(b), the whistleblower administrative proceeding more closely resembles the whistleblower award determination administrative proceeding contained in the IRM, which only applies to awards determined under section 7623(b). In an effort to both streamline the process and provide information to whistleblowers as early as allowable under section 6103, however, the proposed regulations move the beginning of the proceeding forward. Under the proposed regulations, the whistleblower administrative proceeding begins when the Whistleblower Office sends out the preliminary award recommendation letter. Accordingly, whistleblowers may receive opportunities to participate in the award determination process at the administrative level even before there is a final determination of tax in the underlying taxpayer action. These opportunities will be provided in connection with all awards paid under section 7623(b), and they are in addition to opportunities a whistleblower may be afforded to assist the IRS in connection with the underlying taxpayer action, for example pursuant to §§301.6103(n)–2 and 301.7623–1(d) of the proposed regulations.

The Treasury and the IRS emphasize, however, that the proposed regulations do

not and cannot move forward a whistleblower's opportunity to appeal an award determination to Tax Court. Under the proposed regulations, the Whistleblower Office will issue an appealable determination or make payment, if a whistleblower has waived the determination, as soon as possible after there has been a final determination of tax (that is, the statutory period for the taxpayer to claim a refund has expired or the underlying taxpayer action is otherwise final).

The whistleblower administrative proceeding generally consists of four steps: (i) a preliminary award recommendation; (ii) a detailed award report; (iii) an opportunity to review documents supporting the preliminary award recommendation; and (iv) an award determination. Under the proposed regulations, the first three steps may occur before the final determination of tax in the underlying taxpayer matter. Given that the amount of collected proceeds is not finally determined until after the final determination of tax, however, the preliminary award recommendation and the detailed award report, as well as the documents made available for inspection, will reflect a tentative or preliminary computation of the amount of collected proceeds.

The whistleblower administrative proceeding is intended to foster a transparent administrative process, to ensure that claimants have a meaningful opportunity to participate in the determination process at the administrative level, to enable the Whistleblower Office to make award determinations based on complete information, and to ensure a fully-documented record on appeal to the Tax Court. The proposed regulations permit claimants to participate in the whistleblower administrative proceeding through a structured process involving correspondence and other communications with the Whistleblower Office. Claimants are afforded opportunities to review the Whistleblower Office's preliminary award recommendation, to provide additional information regarding their claims that is relevant to an award determination, and to submit comments challenging all aspects of the preliminary findings at the administrative level. The Treasury and the IRS recognize that, in some cases, claimants may be able to provide information during the whistleblower administrative proceeding that could be critical to the award determination but that is not already contained in the administrative claim file. For example, a claimant may be able to demonstrate that a determination is based on a misapplication of the lower award percentages of section 7623(b)(2) by providing information that demonstrates that the claimant was the original source of public source information.

The Treasury and the IRS recognize that, while detailed administrative claim files assist the Whistleblower Office in making fair and accurate award determinations, steps should be taken to prevent potential redisclosure or misuse of the taxpayer's confidential return information contained in those files. Section 6103(h)(4) and §301.6103(h)(4)–1 of the proposed regulations authorize the disclosures made by the Whistleblower Office in the course of the whistleblower administrative proceeding, but they provide neither redisclosure prohibitions nor penalties. Accordingly, the proposed regulations require claimants to execute confidentiality agreements before they may receive a detailed description of the factors that contributed to the preliminary award recommendation or view documents that support the recommendation. A claimant is not required to execute a confidentiality agreement before appealing an award determination to the Tax Court, and executing an agreement does not prevent a claimant from seeking Tax Court review. Moreover, a claimant's execution of a confidentiality agreement would not preclude the claimant from providing to Congress certain information about the preliminary award recommendation, but it would preclude the claimant from providing to Congress information disclosed to the claimant after the execution of the agreement and during the whistleblower administrative proceeding. Section 6103(f), however, provides a general framework for Congress to access taxpayer return information, and this general framework may also be used in connection with whistleblower award claims.

The proposed regulations provide that the Whistleblower Office, in determining the award percentage, may treat a claimant's violation of the terms of the confidentiality agreement as a negative factor and, thus, as a basis for reducing the amount of an award. Further, while the proposed regulations provide claimants with an opportunity to view information in the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, the proposed regulations provide rules intended to safeguard the disclosure of information to a claimant (for example, supervised document review and no photocopying of documents).

Administrative proceedings for denials of awards under section 7623(b)

Finally, the proposed regulations provide that in cases in which the Whistleblower Office will reject a claim under section 7623(b), pursuant to §301.7623–1(b) or (c), or will deny a claim under section 7623(b), either because the IRS did not proceed with an action based on the information provided or because the IRS did not collect proceeds, the Whistleblower Office will send a preliminary denial letter to the claimant. Sending this letter marks the beginning of the whistleblower administrative proceeding. This notice will be provided as promptly as possible under the particular circumstances of a given case. The claimant will then have 30 days within which to provide comments to the Whistleblower Office. Again, this approach is intended to foster a transparent and accurate review process. Given the large administrative burden involved, however, the proposed regulations do not provide preliminary notice and comment procedures applicable to denials of claims for award under section 7623(a).

Comments are specifically requested on:

(1) Whether claimants should be afforded additional opportunities to participate in whistleblower administrative proceedings, and if so, what additional opportunities would be beneficial to the Whistleblower Office and to claimants and why.

(2) Whether additional safeguards should be adopted to further protect taxpayer return information disclosed in the course of whistleblower administrative proceedings and, if so, what safeguards would be effective and appropriate.

(3) Whether starting a whistleblower administrative proceeding before a final determination of tax in the underlying taxpayer action provides a meaningful benefit for whistleblowers.

Determining the Amount of Awards and Paying Awards

Section 301.7623–4 of these proposed regulations provides the framework and criteria that the Whistleblower Office will use in exercising the discretion granted under section 7623 to make awards. The proposed regulations are consistent with, and build on, the award determination provisions provided in the IRM. The rules of this section are proposed to apply to claims for awards under both section 7623(a) and section 7623(b).

Generally, the proposed regulations adopt a fixed percentage approach pursuant to which the Whistleblower Office will assign claims for award to one of a number of fixed percentages within the applicable award percentage range. The fixed percentage approach provides a structure that will promote consistency in the award determination process by enabling the Whistleblower Office to determine awards across the breadth of the applicable percentage range based on meaningful distinctions among cases. In general, the Whistleblower Office will determine awards at the uppermost end of the applicable percentage range, for example, 30 percent of collected proceeds under section 7623(b)(1), only in extraordinary cases. The fixed percentage approach avoids having to draw fine distinctions that might seem unfair and arbitrary, given the differences among claims for award with respect to both the facts and law of the underlying actions and the nature and extent of the substantial contribution of the claimants.

Under these proposed regulations, the Whistleblower Office generally will assign the fixed percentages to claims for award by evaluating the substantial contribution of the claimant to the underlying action(s) based on the Whistleblower Office's review of the entire administrative claim file and the application of the positive factors and negative factors, listed in §301.7623–4(b), to the facts. After the application of the positive and negative factors has been completed, the Whistleblower Office will review the planning and initiating factors, if applicable. The purpose of this criteria-based approach is to also promote consistency in the award determination process. In addition, this approach is intended to provide transparency in the process, and the publication of the criteria should provide helpful guidance to claimants when submitting their claims and in understanding the basis for award determinations. For claims involving multiple actions (regardless of the number of taxpayers involved), the proposed regulations enable the Whistleblower Office to determine and apply separate award percentages on an action-by-action basis in appropriate cases. The Treasury and the IRS recognize that a multiple-action determination may result in a lengthier award process, but it may be necessary in some cases.

Section 7623(b)(3) provides for an appropriate reduction of awards to claimants who planned and initiated the actions that led to the underpayment of tax or actions described in section 7623(a)(2) (the underlying acts). Section 7623(b)(3), unlike section 7623(b)(1) and section 7623(b)(2), provides no direction to the Whistleblower Office on what to consider in exercising this grant of discretion. Accordingly, the proposed regulations provide slightly more flexibility to determine the amount of an appropriate reduction under this section than they provide under the respective frameworks for determining awards for substantial and less substantial contributions.

Under the proposed regulations, the Whistleblower Office will make a threshold determination of whether a claimant planned and initiated the underlying acts, but this determination will not result in an automatic or fixed reduction of the award percentage or award amount. A claimant will only satisfy the threshold determination if the claimant (i) designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned an underlying act, (ii) took steps to start, introduce, originate, set into motion, promote or otherwise initiated an underlying act, and (iii) knew or had reason to know that there were tax implications to planning and initiating the underlying act.

If the Whistleblower Office determines that a claimant meets the threshold for planning and initiating, the Whistleblower Office will then categorize and evaluate the extent of the claimant's planning and initiating of the underlying acts, based on the application of factors listed in §301.7623–4(c)(3)(iv) to the facts contained in the administrative claim file, to determine the amount of the appropriate reduction, if any. The proposed regulations' use of the categories primary, significant, and moderate, like the use of the fixed percentage and criteria approach for determining awards in substantial contribution and less substantial contribution cases, is intended to promote consistency, fairness, and transparency in an award determination process that is inherently subjective.

The proposed regulations do not adopt a "principal architect" approach to the application of section 7623(b)(3), based in part on the plain language of the statutory provision, which does not require a single planner. More than one individual may plan and initiate the actions that lead to a tax underpayment or violation. The Treasury and the IRS recognize the value that all whistleblowers may provide, and the proposed regulations balance the goal of incentivizing whistleblowers with the plain language of the statute by providing for a sliding scale of reductions to an award for planning and initiating.

The proposed regulations provide rules for determining awards when two or more independent claims, based on different information, relate to the same collected proceeds. In these situations, the proposed regulations allow the Whistleblower Office to determine multiple awards, limited in aggregate amount to the maximum amount that could have been awarded to a single claimant, rather than restricting the determination to a single award payable to the first individual that files a claim for award or payable on some other basis.

The proposed regulations also provide rules for determining whether affiliated claimants are eligible for awards and, if so, for determining the amount of the awards. The rule covering eligible affiliated claimants is intended to apply when the Whistleblower Office determines that an eligible individual is attempting to avoid a reduced award, for example, based on the application of the rules of section 7623(b)(3) or the application of negative factors, by having another individual to whom those rules would otherwise not apply submit the claim on behalf of the eligible individual. This rule allows the Whistleblower Office to put the actual claimant in the shoes of the purported claimant for purposes of determining the amount of the award.

Comments are specifically requested on:

(1) The efficacy of the fixed percentage approach provided under these proposed regulations.

(2) Whether there are additional positive factors, negative factors, or planning and initiating factors that would be useful for the Whistleblower Office to consider in determining the amount of awards under these regulations.

(3) The threshold determination of whether a whistleblower planned and initiated an underlying act.

(4) Whether the IRS should determine and pay multiple awards in cases in which two or more independent claims relate to the same collected proceeds, as provided under the proposed regulations, or whether only the first individual to provide information or submit a claim relating to particular collected proceeds should receive an award.

(5) The application of the eligible affiliated claimant rule.

Information Disclosures in Whistleblower Administrative Proceedings

Section 6103(h)(4) authorizes the disclosure of returns and return information in administrative or judicial proceedings pertaining to tax administration in certain circumstances. This rule provides the authority to disclose return information for purposes of a whistleblower administrative proceeding under section 7623. Section 301.6103(h)(4)–1 of these proposed regulations specifically authorizes the Director, officers, and employees of the Whistleblower Office to disclose return information to the extent necessary to conduct whistleblower administrative proceedings. To minimize the potentially adverse consequences of the disclosure, and possible redisclosure, of return information, these proposed regulations provide that the Whistleblower Office will use confidentiality agreements in section 7623(b) whistleblower award determination administrative proceedings, as well as other safeguards, to minimize possible redisclosures of return information while still providing meaningful opportunities for claimants to participate in whistleblower administrative proceedings.

Comments are specifically requested on whether the proposed regulations strike an appropriate balance between minimizing possible redisclosures of confidential return information and providing meaningful opportunities for claimants to participate in the administrative processing of their claims.

Proposed Effective Dates

When finalized, §§301.7623–1, 301.7623–2, 301.7623–3, and 301.6103(h)(4)–1 are proposed to apply to information submitted on or after the date these rules are adopted as final regulations in the **Federal Register**, and to claims for award under sections 7623(a) and 7623(b) that are open as of that date. Likewise, §301.7623–4 is proposed to apply to information submitted on or after that date, and to claims for award under section 7623(b) that are open as of that date. Section 301.7623–4 is not proposed to apply to claims for award under section 7623(a) that are open as of that date. This exception is intended to allow the IRS to continue to apply consistent rules to open claims for award under the discretionary award program of section 7623(a).

Comments are specifically requested on whether the proposed effective dates are appropriate.

Special Analyses

It has been determined that these proposed rules are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal authors of these regulations are Meghan M. Howard and Robert T. Wearing of the Office of the Associate Chief Counsel (Procedure and Administration).

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Sections 301.7623–1 through 301.7623–4 also issued under 26 U.S.C. 7623. * * *

Section 301.6103(h)(4)–1 also issued under 26 U.S.C. 6103(h)(4) and 26 U.S.C. 6103(q). * * *

Par. 2. Section 301.6103(h)(4)–1 is added to read as follows:

§ 301.6103(h)(4)–1 Disclosure of returns and return information in whistleblower administrative proceedings.

(a) *In general.* A whistleblower administrative proceeding (as described in §301.7623–3) is an administrative proceeding pertaining to tax administration within the meaning of section 6103(h)(4).

(b) *Disclosures in whistleblower administrative proceedings.* Pursuant to section 6103(h)(4) and paragraph (a) of

this section, the Director, officers, and employees of the Whistleblower Office may disclose returns and return information (as defined by section 6103(b)) to an individual (or the individual's legal representative, if any) to the extent necessary to conduct a whistleblower administrative proceeding (as described in § 301.7623–3), including but not limited to—

(1) By communicating a preliminary award recommendation or preliminary denial letter to the individual;

(2) By providing the individual with an award report package;

(3) By conducting a meeting with the individual to review documents supporting the preliminary award recommendation; and

(4) By sending an award decision letter, award determination letter, or award denial letter to the individual.

(c) *Effective/applicability date*. Section 301.6103(h)(4)–1 will be effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. When finalized, this section is proposed to apply with respect to whistleblower administrative proceedings beginning on or after the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 301.7623–1 is revised to read as follows:

§301.7623–1 General rules, submitting information on underpayments of tax or violations of the internal revenue laws, and filing claims for award.

(a) *In general*. In cases in which awards are not otherwise provided for by law, the Whistleblower Office may pay an award under section 7623(a), in a suitable amount, for information necessary for detecting underpayments of tax or detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same. In cases that satisfy the requirements of section 7623(b)(5) and (b)(6) and in which the Internal Revenue Service (IRS) proceeds with an administrative or judicial action based on information provided by an individual, the Whistleblower Office must determine an award under section 7623(b)(1), (2), or (3). The awards provided for by section 7623 and this paragraph must be paid from collected proceeds, as defined in § 301.7623–2(d).

(b) *Eligibility to file claim for award*. (1) *In general*. Any individual, other than an individual described in paragraph (b)(2) of this section, is eligible to file a claim for award and to receive an award under section 7623 and §§ 301.7623–1 through 301.7623–4.

(2) *Ineligible claimants*. The Whistleblower Office will reject any claim for award filed by an ineligible claimant and will provide written notice of the rejection to the claimant. The following individuals are not eligible to file a claim for award or receive an award under section 7623 and §§ 301.7623–1 through 301.7623–4:

(i) An individual who is an employee of the Department of Treasury or was an employee of the Department of Treasury when the individual obtained the information on which the claim is based;

(ii) An individual who obtained the information through the individual's official duties as an employee of a Federal, State, or local Government, or who is acting within the scope of those official duties as an employee of a Federal, State, or local Government;

(iii) An individual who is or was required by Federal law or regulation to disclose the information or who is or was precluded by Federal law or regulation from disclosing the information;

(iv) An individual who obtained or was furnished the information while acting in an official capacity as a member of a Federal or State body or commission having access to materials such as Federal returns, copies, or abstracts; or

(v) An individual who obtained or had access to the information based on a contract with the Federal government.

(3) *Ineligible affiliated claimants*. If the Whistleblower Office determines that an affiliated claimant, as defined in § 301.7623–2(f), filed a claim for award based on information obtained from an ineligible individual for the purpose of avoiding the rejection of the claim that would result if the claim was filed by the ineligible individual, then the Whistleblower Office may treat the claim as if it had been filed by the ineligible individual. See § 301.7623–4(c)(4) for rules regarding eligible affiliated claimants.

(c) *Submission of information and claims for award*. (1) *Submitting information*. To be eligible to receive an award under section 7623 and §§ 301.7623–1 through 301.7623–4, an individual must submit to the IRS specific and credible information that the individual believes will lead to collected proceeds from persons whom the individual believes have failed to comply with the internal revenue laws. In general, an individual's submission should identify the person(s) believed to have failed to comply with the internal revenue laws and should provide substantive information, including all available documentation, that supports the individual's allegations. Information that identifies a pass-through entity will be considered to also identify all persons with a direct or indirect interest in the entity. Information that identifies a member of a firm who promoted another identified person's participation in a transaction described and documented in the information provided will be considered to also identify the firm and all other members of the firm. Submissions that provide speculative information or that do not provide specific and credible information regarding tax underpayments or violations of internal revenue laws do not provide a basis for an award. If documents or supporting evidence are known to the individual but are not in the individual's control, then the individual should describe the documents or supporting evidence and identify their location to the best of the individual's ability. If all available information known to the individual is not provided to the IRS by the individual, then the individual bears the risk that this information might not be considered by the Whistleblower Office for purposes of an award.

(2) *Filing claim for award*. To claim an award under section 7623 and §§ 301.7623–1 through 301.7623–4 for information provided to the IRS, an individual must file a formal claim for award by completing and sending Form 211, "*Application for Award for Original Information*," to the Internal Revenue Service, Whistleblower Office, at the address provided on the form, or by complying with other claim filing procedures as may be prescribed by the IRS in other published guidance. The Form 211 should be completed in its entirety and should include the following information:

(i) The date of the claim;

(ii) The claimant's name;

(iii) The claimant's address and telephone number;

(iv) The date of birth of the claimant;

(v) The taxpayer identification number of the claimant; and

(vi) An explanation of how the information on which the claim is based came to the attention and into the possession of the claimant, including, as available, the date(s) on which the claimant acquired the information and a complete description of the claimant's present or former relationship (if any) to the person(s) identified on the Form 211.

(3) *Under penalty of perjury*. No award may be made under section 7623(b) unless the information on which the award is based is submitted to the IRS under penalty of perjury. All claims for award under section 7623 and §§ 301.7623–1 through 301.7623–4 must be accompanied by an original signed declaration under penalty of perjury, as follows: "I declare under penalty of perjury that I have examined this application, my accompanying statement, and supporting documentation and aver that such application is true, correct, and complete, to the best of my knowledge." This requirement precludes the filing of a claim for award by a person serving as a representative of, or in any way on behalf of, another individual. Claims filed by more than one individual (joint claims) must be signed by each individual claimant under penalty of perjury.

(4) *Perfecting claim for award.* If an individual files a claim for award that does not include information described under paragraph (c)(2) of this section, does not contain specific and credible information as described in paragraph (c)(1) of this section, or is based on information that was not submitted under penalty of perjury as required by paragraph (c)(3) of this section, the Whistleblower Office may, in its sole discretion, reject the claim or notify the individual of the deficiencies and provide the individual an opportunity to perfect the claim for award. If an individual does not perfect the claim for award within the time period specified by the Whistleblower Office, then the Whistleblower Office may reject the claim. If the Whistleblower Office rejects a claim, then the Whistleblower Office will provide written notice of the rejection to the claimant. If the Whistleblower Office rejects a claim for the reasons described in this paragraph, then the claimant may perfect and resubmit the claim.

(d) *Request for assistance*. (1) *In general*. The Whistleblower Office, the IRS or IRS Office of Chief Counsel may request the assistance of an individual claimant or the individual claimant's legal representative. Any assistance shall be at the direction and control of the Whistleblower Office, the IRS, or the IRS Office of Chief Counsel assigned to the matter. See § 301.6103(n)–2 for rules regarding written contracts among the IRS, whistleblowers, and legal representatives of whistleblowers.

(2) *No agency relationship*. Submitting information, filing a claim for award, or responding to a request for assistance does not create an agency relationship between a claimant and the Federal government, nor does a claimant or the claimant's legal representative act in any way on behalf of the Federal government.

(e) *Identification of whistleblowers*. Under the informant's privilege, the IRS will use its best efforts to protect the identity of whistleblowers. In some circumstances, the IRS may need to reveal a whistleblower's identity, for example, when it is determined that it is in the best interests of the Government to use a whistleblower as a witness in a judicial proceeding. In those circumstances, the IRS will make every effort to notify the whistleblower before revealing the whistleblower's identity.

(f) *Effective/applicability date*. When finalized, § 301.7623–1 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 4. Section 301.7623–2 is added to read as follows:

§301.7623–2 Definitions.

(a) *Action*. (1) *In general*. For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *action* means an administrative or judicial action.

(2) *Administrative action*. For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *administrative action* means all or a portion of an Internal Revenue Service (IRS) civil or criminal proceeding against any person that may result in collected proceeds, as defined in paragraph (d) of this section, including, for example, an examination, a collection proceeding, a status determination proceeding, or a criminal investigation.

(3) *Judicial action*. For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *judicial action* means all or a portion of a proceeding against any person in any court that may result in collected proceeds, as defined in paragraph (d) of this section.

(b) *Proceeds based on*. (1) *In general*. For purposes of section 7623(b) and §§301.7623–1 through 301.7623–4, IRS *proceeds based on* information provided by an individual only when the IRS:

(i) Initiates a new action;

(ii) Expands the scope of an ongoing action; or

(iii) Continues to pursue an ongoing action, that the IRS would not have initiated, expanded the scope of, or continued to pursue, respectively, but for the information provided by the individual. The IRS does not proceed based on when the IRS merely analyzes the information provided by the individual and investigates the matter.

(2) *Example*. The provisions of paragraph (b)(1) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and §301.7623–1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's foreign sales in Country A, and, based on those facts, alleges that the taxpayer was not entitled to a foreign tax credit relating to its foreign sales in Country A. The IRS receives the information after having already initiated an examination of the taxpayer. The IRS's audit plan does not include consideration of the amount of the foreign tax credit relating to the taxpayer's foreign sales in Country A but, based on the information provided, the IRS expands the examination to include the foreign tax credit issue. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the portion of the IRS's examination of the taxpayer relating to the foreign tax credit issue is an administrative action with which the IRS proceeds based on the information provided by the individual. If the examination of the taxpayer included the foreign tax credit issue before the individual provided the information, then no portion of the IRS's examination of the taxpayer is an administrative action with which the IRS proceeds based on the information provided, unless the

IRS would not have continued to pursue the examination but for the information provided.

(c) *Related action*. (1) *In general*. For purposes of section 7623(b) and §§ 301.7623–1 through 301.7623–4, the term *related action* is limited to:

(i) A second or subsequent action against the person(s) identified in the information provided and subject to the original action if, in the second or subsequent action, the IRS proceeds based on the specific facts described and documented in the information provided; and

(ii) An action against a person other than the person(s) identified in the information provided and subject to the original action if:

(A) The other, unidentified person is directly related to the person identified in the information provided;

(B) The facts relating to the underpayment of tax or violations of the internal revenue laws by the other person are substantially the same as the facts described and documented in the information provided (with respect to the person(s) subject to the original action); and

(C) The IRS proceeds with the action against the other person based on the specific facts described and documented in the information provided. For purposes of this paragraph, an unidentified person is directly related to the person identified in the information provided if the IRS can identify the unidentified person using only the information provided (without first having to use the information provided to identify any other person or having to independently obtain additional information).

(2) *Examples*. The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. Information provided to the IRS by an individual, under section 7623 and §301.7623–1, identifies a taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes in Year 1. The IRS proceeds with an examination of the taxpayer for Year 1 based on the information provided by the individual. The IRS discovers that the taxpayer engaged in the same activities in Year 2 and expands the examination to Year 2. In the course of the examination, the IRS obtains, through the issuance of IDRs and summonses, additional facts that are unrelated to the activities described in the information provided by the individual. Based on these additional facts, the IRS expands the scope of the examination of the taxpayer for both Year 1 and Year 2. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the portion of the IRS's examination of the taxpayer in Year 2 relating to the activities described and documented in the information provided (with respect to Year 1) is a related action because it satisfies the conditions of paragraph (c)(1)(i) of this section. The portions of the IRS's examination of the taxpayer in both Year 1 and Year 2 relating to the additional facts obtained through the issuance of IDRs and summonses are not related actions (nor are they administrative actions based on the information provided).

Example 2. Information provided to the IRS by an individual, under section 7623 and §301.7623–1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, based on those facts, alleges tax underpayments by Taxpayer 1. The information provided also identifies an accountant (CPA 1) and describes and documents specific facts relating to CPA 1's contribution to the activities of Taxpayer 1 that the individual alleges resulted in tax underpayments. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the individual. Using only the information provided, the IRS obtains CPA 1's client list and identifies two taxpayer/clients of CPA 1 (Taxpayer 2 and Taxpayer 3) that appear to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 2 and finds that Taxpayer 2 engaged in the same activities as those described in the information provided with respect to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 3 and finds that Taxpayer 3 engaged in different activities from those described in the information provided with respect to Taxpayer 1. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the examination of Taxpayer 2 is a related action because it satisfies the conditions of paragraph (c)(1)(ii) of this section. The examination of Taxpayer 3 is not a related action because the relevant facts are not substantially the same as the facts relevant to the examination of Taxpayer 1.

Example 3. Same facts as *Example 2*. Using only the information provided, the IRS identifies a co-promoter of CPA 1 (CPA 2) that appears to have engaged in activities similar to CPA 1. CPA 2 is not a member of CPA 1's firm. The IRS subsequently obtains the client list of CPA 2 and identifies a taxpayer/client of CPA 2 (Taxpayer 4) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 4 and finds that Taxpayer 4 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 2 contributed to the activities in the same way as described in the information provided with respect to CPA 1. The IRS proceeds with an examination of CPA 2's liability for promoter penalties under section 6700 in connection with the activities described in the information provided with respect to Taxpayer 1 and CPA 1. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the examination of CPA 2 is a related action because it satisfies the conditions of paragraph (c)(1)(ii) of this section. The examination of Taxpayer 4 is not a related action because Taxpayer 4 was not related to a person identified in the information provided. CPA 2 was not identified in the information provided and the IRS first had to identify CPA 2 before identifying Taxpayer 4 and proceeding with the examination of Taxpayer 4.

Example 4. Same facts as *Example 2*. An accountant (CPA 3) is a member of CPA 1's firm. Using only the information provided, the IRS obtains the client list of CPA 3 and identifies a taxpayer/client of CPA 3 (Taxpayer 5) that appears to have engaged in activities similar to Taxpayer 1. The IRS proceeds with an examination of Taxpayer 5 and finds that Taxpayer 5 engaged in the same activities as those described in the information provided with respect to Taxpayer 1, and that CPA 3 contributed to the activities in the same way as described in the information provided with respect to CPA 1. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the examination of Taxpayer 5 is a related action because Taxpayer 5 is related to CPA 3, a person considered to be identified in the information provided under §301.7623–1(c)(1), and the facts relating to Taxpayer 5 are substantially the same as the facts described and documented in the information provided. An IRS examination of CPA 3's liability for promoter penalties under section 6700, based on the facts described and documented in the information provided with respect to Taxpayer 1 and CPA 1, is an administrative action based on the information provided.

Example 5. Information provided to the IRS by an individual, under section 7623 and §301.7623–1, identifies a taxpayer (Taxpayer 1), describes and documents specific facts relating to Taxpayer 1's activities, and, in particular, Taxpayer 1's participation in a transaction. Based on those facts, the individual alleges that Taxpayer 1 owed additional taxes. The IRS proceeds with an examination of Taxpayer 1 based on the information provided by the individual. The IRS identifies the other parties to the transaction described in the information provided (Taxpayer 2 and Taxpayer 3). The IRS proceeds with examinations of Taxpayer 2 and Taxpayer 3 relating to their participation in the transaction described in the information provided. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the IRS's examinations of Taxpayer 2 and Taxpayer 3 relating to the activities described and documented in the information provided are related actions because they satisfy the conditions of paragraph (c)(1)(ii) of this section.

(d) *Collected proceeds*. (1) *In general*. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the terms *proceeds of amounts collected* and *collected proceeds* (collectively, *collected proceeds*) include: tax, penalties, interest, additions to tax, and additional amounts collected because of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided. Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code.

(2) *Refund netting*. (i) *In general*. If any portion of a claim for refund that is substantively unrelated to the information provided is:

(A) Allowed, and

(B) Used to satisfy a tax liability attributable to the information provided instead of refunded to the taxpayer, then the allowed but non-refunded amount constitutes collected proceeds.

(ii) *Example*. The provisions of paragraph (d)(2)(i) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a corporate taxpayer (Corporation), describes and documents specific facts relating to Corporation's activities, and, based on those facts, alleges that Corporation owed additional taxes. Based on the information provided by the individual, the IRS proceeds with an examination of Corporation and determines adjustments that would result in an unpaid tax liability of $500,000. During the examination, Corporation informally claims a refund of $400,000 based on adjustments to items of income and expense that are wholly unrelated to the information provided by the individual. The IRS agrees to the unrelated adjustments. The IRS nets the adjustments and determines a tax deficiency of $100,000. Thereafter, Corporation makes full payment of the $100,000 deficiency. For purposes of section 7623 and §§301.7623–1 through 301.7623–4, the collected proceeds include the $400,000 informally claimed as a refund and netted against the adjustments attributable to the information provided, as well as the $100,000 paid by Corporation.

(3) *Criminal fines*. Criminal fines deposited into the Victims of Crime Fund are not collected proceeds and cannot be used for payment of awards.

(4) *Computation of collected proceeds*. (i) *In general*. The Whistleblower Office will monitor each case for collection of proceeds. Pursuant to § 301.7623–4(d)(1), the IRS cannot make an award payment until there has been a final determination of tax. For purposes of determining the amount of an award under section 7623 and §§ 301.7623–1 through 301.7623–4, after there has been a final determination of tax as defined in §301.7623–4(d)(2), the IRS will compute the amount of collected proceeds based on all information known with respect to the taxpayer's account, including with respect to all tax attributes, as of the date the computation is made.

(ii) *Partial collection*. If the IRS does not collect the full amount of taxes, penalties, interest, additions to tax, and additional amounts assessed against the taxpayer, then any amounts that the IRS does collect will constitute collected proceeds in the same proportion that the adjustments attributable to the information provided bear to the total adjustments.

(e) *Amount in dispute and gross income*. (1) *In general*. Section 7623(b) applies with respect to any action against any taxpayer in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $2,000,000 but, if the taxpayer is an individual, then only if the individual's gross income exceeds $200,000 in at least one taxable year subject to the action.

(2) *Amount in dispute*. (i) *In general*. For purposes of section 7623(b)(5) and §§ 301.7623–1 through 301.7623–4, the term *amount in dispute* means the maximum total of tax, penalties, interest, additions to tax, and additional amounts that could have resulted from the action(s) with which the IRS proceeded based on the information provided, if the formal positions taken by the IRS had been sustained. The IRS will compute the amount in dispute, for purposes of award determinations described in § 301.7623–3(c)(6), when there has been a final determination of tax as defined in § 301.7623–4(d)(2).

(ii) *Example*. The provisions of paragraph (e)(2)(i) of this section may be illustrated by the following example:

Example. Information provided to the IRS by an individual, under section 7623 and § 301.7623–1, identifies a corporate taxpayer, describes and documents specific facts relating to the taxpayer's activities, and, based on those facts, alleges that the taxpayer owed additional taxes. The IRS proceeds with an examination of the taxpayer based on the information provided by the individual; makes adjustments to items of income and expense and allows certain credits; and, ultimately, determines a deficiency against the taxpayer of $2,100,000 and issues the taxpayer a statutory notice of deficiency. The taxpayer petitions the notice to the United States Tax Court. The Tax Court sustains the IRS's position, in part, resulting in a deficiency of $1,500,000. The IRS also computes, however, that the total of tax, penalties, interest, additions to tax, and additional amounts that could have resulted from the action, if the court had sustained the IRS's position, in full, was $2,500,000. For purposes of section 7623 and §§ 301.7623–1 through 301.7623–4, the amount in dispute is $2,500,000.

(3) *Gross income*. For purposes of section 7623(b)(5) and §§ 301.7623–1 through 301.7623–4, the term *gross income* has the same meaning as provided under section 61(a). The IRS will compute the individual taxpayer's gross income, for purposes of award determinations described in §301.7623–3(c)(6), when there has been a final determination of tax as defined in § 301.7623–4(d)(2).

(f) *Affiliated claimant*. For purposes of §§ 301.7623–1 through 301.7623–4, the term *affiliated claimant* means an individual that files a claim for award on behalf of another individual. See § 301.7623–1(b)(3) for rules regarding ineligible affiliated claimants and § 301.7623–4(c)(4) for rules regarding eligible affiliated claimants.

(g) *Effective/applicability date*. When finalized, § 301.7623–2 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 301.7623–3 is added to read as follows:

§ 301.7623–3 Whistleblower administrative proceedings and appeals of award determinations.

(a) *In general*. The Whistleblower Office will pay awards under section 7623(a) and determine awards to individuals under section 7623(b) in whistleblower administrative proceedings pursuant to the rules of this section. The whistleblower administrative proceedings described in this section are administrative proceedings pertaining to tax administration for purposes of section 6103(h)(4). See § 301.6103(h)(4)–1 for additional rules regarding disclosures of return information in whistleblower administrative proceedings. The Whistleblower Office may determine awards for claims involving multiple actions in a single whistleblower administrative proceeding. For purposes of applying the rules of this section, the Internal Revenue Service (IRS) may rely on the claimant's description of the amount owed by the taxpayer(s). The IRS may, however, rely on other information as necessary (for example, when the alleged amount in dispute is below the $2 million threshold of section 7623(b)(5)(B), but the actual amount in dispute is above the threshold).

(b) *Awards under section 7623(a)*. (1) *Preliminary award recommendation*. In cases in which the Whistleblower Office recommends payment of an award under section 7623(a), the Whistleblower Office will communicate a preliminary award

recommendation under section 7623(a) and §§ 301.7623–1 through 301.7623–4 to the claimant by sending a preliminary award recommendation letter that states the Whistleblower Office's preliminary computation of the amount of collected proceeds, recommended award percentage, recommended award amount (even in cases when the application of section 7623(b)(2) or section 7623(b)(3) results in a reduction of the recommended award amount to zero), and a list of the factors that contributed to the recommended award percentage. The whistleblower administrative proceeding described in paragraphs (b)(1) and (2) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. If the claimant believes that the Whistleblower Office erred in evaluating the information provided, the claimant has 30 days from the date the Whistleblower Office sends the preliminary award recommendation to submit comments to the Whistleblower Office. The Whistleblower Office will review all comments submitted timely by the claimant (or the claimant's legal representative, if any) and pay an award, pursuant to paragraph (b)(2) of this section.

(2) *Decision letter*. At the conclusion of the process described in paragraph (b)(1) of this section, and when there is a final determination of tax, as defined in § 301.7623–4(d)(2), the Whistleblower Office will pay an award under section 7623(a) and §§ 301.7623–1 through 301.7623–4. The Whistleblower Office will communicate the amount of the award to the claimant in a decision letter.

(3) *Denials*. If the Whistleblower Office rejects a claim for award under section 7623(a), pursuant to § 301.7623–1(b) or (c), or if the IRS either did not proceed with an action, as defined in § 301.7623–2(b), or did not collect proceeds, as defined in § 301.7623–2(d), then the Whistleblower Office will not apply the rules of paragraphs (b)(1) or (2) of this section. The Whistleblower Office will provide written notice to the claimant of the denial of any award.

(c) *Awards under section 7623(b)*. (1) *Preliminary award recommendation*. The Whistleblower Office will prepare a preliminary award recommendation based on the Whistleblower Office's review of the administrative claim file and the application of the rules of section 7623 and §§ 301.7623–1 through 301.7623–4 to the facts of the case. See paragraph (e)(2) of this section for a description of the administrative claim file.

The whistleblower administrative proceeding described in paragraphs (c)(1) through (6) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. The preliminary award recommendation is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The preliminary award recommendation will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623–4(d)(2).

(2) *Contents of preliminary award recommendation*. The Whistleblower Office will communicate the preliminary award recommendation under section 7623(b) to the individual by sending:

(i) A preliminary award recommendation letter that describes the individual's options for responding to the preliminary award recommendation;

(ii) A summary report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, the recommended award amount (even in cases when the application of section 7623(b)(2) or section 7623(b)(3) results in a reduction of the recommended award amount to zero), and a list of the factors that contributed to the recommended award percentage;

(iii) An award consent form; and

(iv) A confidentiality agreement.

(3) *Opportunity to respond to preliminary award recommendation*. The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the preliminary award recommendation letter to respond to the preliminary award recommendation in one of the following ways:

(i) If the individual takes no action, then the Whistleblower Office will make a final award determination, pursuant to paragraph (c)(6) of this section;

(ii) If the individual signs, dates, and returns the award consent form agreeing to the preliminary award recommendation and waiving any and all administrative and judicial appeal rights, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section;

(iii) If the individual signs, dates, and returns the confidentiality agreement, then the Whistleblower Office will provide the individual with an opportunity to review documents supporting the report, and a detailed award report pursuant to paragraphs (c)(3) and (4) of this section, and any comments submitted by the individual will be added to the administrative claim file; or

(iv) If the individual submits comments on the preliminary award recommendation to the Whistleblower Office, but does not sign, date, and return the confidentiality agreement, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination, pursuant to paragraph (c)(6) of this section.

(4) *Detailed report*. (i) *Contents of detailed report*. If the individual signs, dates, and returns the confidentiality agreement accompanying the preliminary award recommendation under section 7623(b), pursuant to paragraph (c)(3) of this section, then the Whistleblower Office will send the individual:

(A) A detailed report that states a preliminary computation of the amount of collected proceeds, the recommended award percentage, and the recommended award amount, and provides a full explanation of the factors that contributed to the recommended award percentage;

(B) Instructions for scheduling an appointment for the individual (and the individual's legal representative, if any) to review information in the administrative claim file that is not protected by one or more common law or statutory privileges; and

(C) An award consent form. The detailed report is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The detailed report will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623–4(d)(2).

(ii) *Opportunity to respond to detailed report*. The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office)

from the date of the detailed report to respond in one of the following ways:

(A) If the individual takes no action, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section;

(B) If the individual requests an appointment to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges, then a meeting will be arranged pursuant to paragraph (c)(5) of this section;

(C) If the individual does not request an appointment but does submit comments on the detailed report to the Whistleblower Office, then the comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination pursuant to paragraph (c)(6) of this section; or

(D) If the individual signs, dates, and returns the award consent form agreeing to the preliminary award recommendation and waiving any and all administrative and judicial appeal rights, then the Whistleblower Office will make an award determination, pursuant to paragraph (c)(6) of this section.

(5) *Opportunity to review documents supporting award report recommendations*. Appointments for the individual (and the individual's legal representative, if any) to review information from the administrative claim file that is not protected from disclosure by one or more common law or statutory privileges will be held at the Whistleblower Office in Washington, D.C., unless the Whistleblower Office, in its sole discretion, decides to hold the meeting at another location. At the appointment, the Whistleblower Office will provide for viewing the pertinent information from the administrative claim file. The Whistleblower Office will supervise the individual's review of the documents and the individual will not be permitted to make copies of the documents. The individual will have 30 days (this period may be extended at the sole discretion of the Whistleblower Office) from the date of the appointment to submit comments on the detailed report and the documents reviewed at the appointment to the Whistleblower Office. All comments will be added to the administrative claim file and reviewed by the Whistleblower Office in making an award determination, pursuant to paragraph (c)(6) of this section.

(6) *Determination letter*. After the individual's participation in the whistleblower administrative proceeding, pursuant to paragraph (c) of this section, has concluded, and there is a final determination of tax, as defined in § 301.7623–4(d)(2), a Whistleblower Office official will determine the amount of the award under section 7623(b)(1), (2), or (3), and §§ 301.7623–1 through 301.7623–4, based on the official's review of the administrative claim file. The Whistleblower Office will communicate the award to the individual in a determination letter, stating the amount of the award. If, however, the individual has executed an award consent form agreeing to the amount of the award and waiving the individual's right to appeal the award determination, pursuant to section 7623(b)(4) and paragraph (d) of this section, then the Whistleblower Office will not send the individual a determination letter and will make payment of the award as promptly as circumstances permit.

(7) *Denials*. If the Whistleblower Office rejects a claim for award under section 7623(b), pursuant to § 301.7623–1(b) or (c), or if, with respect to a claim for award under section 7623(b), the IRS either did not proceed with an action, as defined in § 301.7623–2(b), or did not collect proceeds, as defined in §301.7623–2(d), then the Whistleblower Office will not apply the rules of paragraphs (c)(1) through (6) of this section. The Whistleblower Office will send to the claimant a preliminary denial letter that states the basis for the denial of the claim. The whistleblower administrative proceeding described in this paragraph begins on the date the Whistleblower Office sends the preliminary denial letter. If the claimant believes that the Whistleblower Office erred in evaluating the information provided, the claimant has 30 days from the date the Whistleblower Office sends the preliminary denial letter to submit comments to the Whistleblower Office. The Whistleblower Office will review all comments submitted timely by the claimant and, following that review, the Whistleblower Office will either provide written notice to the claimant of the denial of any award or apply the rules of paragraphs (c)(1) through (c)(6) of this section.

(d) *Appeal of award determination*. Any determination regarding an award under section 7623(b)(1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court.

(e) *Administrative record*. (1) *In general*. The administrative record comprises all information contained in the administrative claim file that is not protected by one or more common law or statutory privileges that is relevant to the award determination.

(2) *Administrative claim file*. The administrative claim file will include the following materials relating to the action(s) with respect to which the IRS proceeded based on the information provided by the individual, as applicable, and to which the determination relates:

(i) The Form 211 filed by the individual and all information provided by the individual (whether provided with the individual's original submission or through a subsequent contact with the IRS).

(ii) Copies of all debriefing notes and recorded interviews held with the individual (and the individual's representative, if any).

(iii) Form(s) 11369, "*Confidential Evaluation Report on Claim for Award*," including narratives prepared by the relevant IRS office(s), explaining the individual's contributions to the actions and documenting the actions taken by the IRS in the case(s). The Form 11369 will refer to and incorporate additional documents relating to the issues raised by the claim, as appropriate, including, for example, relevant portions of revenue agent reports, copies of agreements entered into with the taxpayer(s), tax returns, and activity records.

(iv) Copies of all contracts entered into among the IRS, the individual, and the individual's legal representative (if any), and an explanation of the cooperation provided by the individual (or the individual's legal representative, if any) under the contract.

(v) Any information that reflects actions by the individual that may have had a negative impact on the IRS's ability to examine the taxpayer(s).

(vi) All correspondence and documents sent by the Whistleblower Office to the individual.

(vii) All notes, memoranda, and other documents made by officers and employees of the Whistleblower Office and con-

sidered by the official making the award determination.

(viii) All correspondence and documents received by the Whistleblower Office from the individual (and the individual's legal representative, if any) in the course of the whistleblower administrative proceeding.

(ix) All other information considered by the official making the award determination.

(f) *Effective/applicability date*. When finalized, § 301.7623–3 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under sections 7623(a) and 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 6. Section 301.7623–4 is added to read as follows:

§ 301.7623–4 Amount and payment of award.

(a) *In general*. The Whistleblower Office will pay all awards under section 7623(a) and determine all awards under section 7623(b). For all awards under section 7623 and §§ 301.7623–1 through 301.7623–4, the Whistleblower Office will—

(1) Analyze the claim by applying the rules provided in paragraph (c) of this section to the information contained in the administrative claim file to determine an award percentage; and

(2) Multiply the award percentage by the amount of collected proceeds. If the award determination arises out of a single whistleblower administrative proceeding involving multiple actions, the Whistleblower Office may determine separate award percentages on an action-by-action basis and apply the separate award percentages to the collected proceeds attributable to the corresponding actions. The Internal Revenue Service (IRS) will pay all awards in accordance with the rules provided in paragraph (d) of this section. All relevant factors will be taken into account by the Whistleblower Office in determining whether an award will be paid and, if so, the amount of the award. No person is authorized under this section to make any offer or promise or otherwise bind the Whistleblower Office with respect to the amount or payment of an award.

(b) *Factors used to determine award percentage*. (1) *Positive factors*. The application of the following non-exclusive factors may support increasing an award percentage under paragraphs (c)(1) or (2) of this section:

(i) The individual acted promptly to inform the IRS or the taxpayer of the tax noncompliance.

(ii) The information provided identified an issue of a type previously unknown to the IRS.

(iii) The information provided identified taxpayer behavior that the IRS was unlikely to identify or that was particularly difficult to detect through the IRS's exercise of reasonable diligence.

(iv) The information provided thoroughly presented the factual details of tax noncompliance in a clear and organized manner, particularly if the manner of the presentation saved the IRS work and resources.

(v) The individual (or the individual's legal representative, if any) provided exceptional cooperation and assistance during the pendency of the action(s), for example by providing a useful technical or legal analysis of the taxpayer's records in response to a request from the Whistleblower Office, the IRS, or the IRS Office of Chief Counsel.

(vi) The information provided identified assets of the taxpayer that could be used to pay liabilities, particularly if the assets were not otherwise known to the IRS.

(vii) The information provided identified connections between transactions, or parties to transactions, that enabled the IRS to understand tax implications that might not otherwise have been understood by the IRS.

(viii) The information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to correct a previously-reported improper position.

(2) *Negative factors*. The application of the following non-exclusive factors may support decreasing an award percentage under paragraphs (c)(1) or (2) of this section:

(i) The individual delayed informing the IRS after learning the relevant facts, particularly if the delay adversely affected the IRS's ability to pursue an action or issue.

(ii) The individual contributed to the underpayment of tax or tax noncompliance identified.

(iii) The individual directly or indirectly profited from the underpayment of tax or tax noncompliance identified.

(iv) The individual (or the individual's legal representative, if any) negatively affected the IRS's ability to pursue the action(s), for example by disclosing the existence or scope of an enforcement activity.

(v) The individual (or the individual's legal representative, if any) violated instructions provided by the IRS, particularly if the violation caused the IRS to expend additional resources.

(vi) The individual (or the individual's legal representative, if any) violated the terms of the confidentiality agreement described in § 301.7623–3(b)(2).

(vii) The individual (or the individual's legal representative, if any) violated the terms of a contract entered into with the IRS pursuant to § 301.6103(n)–2.

(viii) The individual provided false or misleading information or otherwise violated the requirements of section 7623(b)(6)(C) or § 301.7623–1(c)(3).

(c) *Amount of award percentage*. (1) *Award for substantial contribution*. (i) *In general*. If the IRS proceeds with any administrative or judicial action based on information brought to the IRS's attention by an individual, such individual shall, subject to paragraphs (c)(2) and (3) of this section, receive as an award at least 15 percent but not more than 30 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The amount of any award under this paragraph depends on the extent of the individual's substantial contribution to the action(s). See paragraph (c)(5) of this section for rules regarding multiple claimants.

(ii) *Computational framework*. Starting the analysis at the statutory minimum of 15 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the individual merits an increased award percentage of 22 percent or 30 percent. The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors. The Whistle-

blower Office will then analyze the contents of the administrative claim file using the factors listed in paragraph (b)(2) of this section to determine whether the individual merits a decreased award percentage of 15 percent, 18 percent, 22 percent, or 26 percent. The Whistleblower Office may decrease the award percentage based on the presence and significance of negative factors. Although the factors listed in paragraphs (b)(1) and (2) of this section are described as positive and negative factors, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of negative factors may offset the presence and significance of positive factors and, while the presence and significance of negative factors alone cannot result in an award percentage of less than 15 percent, the absence of negative factors does not mean that an award percentage will be greater than 15 percent.

(iii) *Example*. The operation of the provisions of paragraph (c)(1)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. It is not intended to provide a standard against which the substantial contribution of an individual submitting a claim for award may be compared. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(1) and paragraph (c)(1)(ii) of this section will depend on the specific facts of each case.

Example. Individual A, an employee in Corporation's sales department, submitted to the IRS a claim for award under section 7623 and information indicating that Corporation improperly claimed a credit in tax year 2006. Individual A's information consisted of numerous non-privileged documents relevant to Corporation's eligibility for the credit. Individual A's original submission also included an analysis of the documents, as well as information about meetings in which the claim for credit was discussed. When interviewed by the IRS, Individual A clarified ambiguities in the original submission, answered questions about Corporation's business and accounting practices, and identified potential sources to corroborate the information. Some of the documents provided by Individual A were not included in Corporation's general record-keeping system and their existence may not have been easily uncovered through normal IRS examination procedures. Corporation initially denied the facts revealed in the information provided by Individual A, which were essential to establishing the impropriety of the claim for credit. IRS examination of Corporation's return confirmed that the credit was improperly claimed by Corporation in tax year 2006, as alleged by Individual A. Corporation agreed to the ensuing assessments of tax and interest and paid the liabilities in full. In this case, Individual A provided specific and credible information that formed the basis for action by the IRS. Individual A provided information that was difficult to detect, provided useful assistance to the IRS, and helped the IRS sustain the assessment. Based on the presence and significance of these positive factors, viewed against all the specific facts relevant to Corporation's 2006 tax year, the Whistleblower Office could increase the award percentage to 22 percent of collected proceeds. If Individual A violated instructions provided by the IRS and the violation caused the IRS to expend additional resources, then the Whistleblower Office could, based on this negative factor, reduce the award percentage to 18 percent or 15 percent (but not to lower than 15 percent of collected proceeds).

(2) *Award for less substantial contribution*. (i) *In general*. If the Whistleblower Office determines that the action described in paragraph (c)(1) of this section is based principally on disclosures of specific allegations resulting from public source information including a judicial or administrative hearing; a government report, hearing, audit, or investigation; or the news media, then the Whistleblower Office may determine an award of no more than 10 percent of the collected proceeds resulting from the action (including any related actions) or from any settlement in response to such action. The appropriate amount of any award under this paragraph depends on the significance of the individual's information and the role of the individual (and the individual's legal representative, if any) in contributing to the action(s). If the individual is the original source of the public source information, however, then the award percentage will be determined under paragraph (c)(1) of this section.

(ii) *Computational framework*. The Whistleblower Office will analyze the administrative claim file to determine whether any of the information provided by the individual contained public source information and, if it did, whether the action described in paragraph (c)(1) of this section was based principally on the public source information. The Whistleblower Office will make this determination based on the extent to which the public source information described a tax violation or facts and circumstances from which a tax violation reasonably may be inferred. If the Whistleblower Office determines that the action was based principally on public source information, then, starting at 1 percent, the Whistleblower Office will analyze the administrative claim file using the factors listed in paragraph (b)(1) of this section to determine whether the individual merits an increased award percentage of 4 percent, 7 percent, or 10 percent. The Whistleblower Office will then determine whether the individual merits a decreased award percentage of zero, 1 percent, 4 percent, or 7 percent using the factors listed in paragraph (b)(2). The Whistleblower Office may increase the award percentage based on the presence and significance of positive factors and may decrease the award percentage based on the presence and significance of negative factors. Like the analysis described in paragraph (c)(1)(ii) of this section, the Whistleblower Office's analysis cannot be reduced to a mathematical equation. The factors are not exclusive and are not weighted and, in a particular case, one factor may override several others. The presence and significance of negative factors may offset the presence and significance of positive factors or result in a zero award, but the absence of negative factors does not mean that an award percentage will be greater than 1 percent.

(iii) *Example*. The operation of the provisions of paragraph (c)(2)(ii) of this section may be illustrated by the following example. The example is intended to illustrate the operation of the computational framework. It is not intended to provide a standard against which the substantial contribution of an individual submitting a claim for award may be compared. The example provides a simplified description of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case(s). The application of section 7623(b)(2) and paragraph (c)(2)(ii) of this section will depend on the specific facts of each case.

Example. Individual A submitted to the IRS a claim for award under section 7623 and information indicating that Taxpayer B was the defendant in a criminal prosecution for embezzlement. Individual A's information further indicated that evidence presented at Taxpayer B's trial revealed Taxpayer B's efforts to conceal the embezzled funds by depositing them in bank accounts of entities controlled by Taxpayer B. In this case, Individual A's information is based principally on disclosures of specific allegations resulting from a judicial hearing. Absent information demonstrating that the investigation leading

to the embezzlement charge was based on information provided by Individual A, section 7623(b)(2) and paragraph (c)(2) of this section applies to the determination of Individual A's award. In this case, there is no reason for the Whistleblower Office to increase the applicable award percentage above 1 percent, the starting point for its analysis, given the absence of positive factors. Accordingly, Individual A may receive an award of 1 percent of collected proceeds.

(3) *Reduction in award and denial of award.* (i) *In general.* If the Whistleblower Office determines that a claim for award is brought by an individual who planned and initiated the actions, transaction, or events (underlying acts) that led to the underpayment of tax or actions described in section 7623(a)(2), then the Whistleblower Office may appropriately reduce the amount of the award percentage that would otherwise result under section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable. The Whistleblower Office will deny an award if the individual is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts.

(ii) *Threshold determination.* An individual *planned and initiated* the underlying acts if the individual:

(A) Designed, structured, drafted, arranged, formed the plan leading to, or otherwise planned, an underlying act,

(B) Took steps to start, introduce, originate, set into motion, promote or otherwise initiate an underlying act, and

(C) Knew or had reason to know that there were tax implications to planning and initiating the underlying act. The individual need not have been the sole person involved in planning and initiating the underlying acts. An individual who merely furnishes typing, reproducing, or other mechanical assistance in implementing one or more underlying acts will not be treated as initiating any underlying act. If the Whistleblower Office determines that an individual has satisfied this initial threshold of planning and initiating, the Whistleblower Office will then reduce the award amount based on the extent of the individual's planning and initiating, pursuant to paragraph (c)(3)(iii) of this section.

(iii) *Computational framework.* After determining the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, the Whistleblower Office will analyze the administrative claim file to make the threshold determination described in paragraph (c)(3)(ii) of this section. If the individual is determined to have planned and initiated the underlying acts, then the Whistleblower Office will reduce the award based on the extent of the individual's planning and initiating. The Whistleblower Office's analysis and the amount of the appropriate reduction determined in a particular case cannot be reduced to a mathematical equation. To determine the appropriate award reduction, the Whistleblower Office will:

(A) Categorize the individual's role as a planner and initiator as primary, significant, or moderate; and

(B) Appropriately reduce the award percentage that would otherwise result from the application of section 7623(b)(1) and paragraph (c)(1) of this section or section 7623(b)(2) and paragraph (c)(2) of this section, as applicable, by 67 percent to 100 percent in the case of a primary planner and initiator, by 34 percent to 66 percent in the case of a significant planner and initiator, or by 0 percent to 33 percent in the case of a moderate planner and initiator. If the individual is convicted of criminal conduct arising from his or her role in planning and initiating the underlying acts, then the Whistleblower Office will deny an award without regard to whether the Whistleblower Office categorized the individual's role as a planner and initiator as primary, significant, or moderate.

(iv) *Factors demonstrating the extent of an individual's planning and initiating.* The application of the following non-exclusive factors may support a determination of the extent of an individual's planning and initiating of the underlying acts:

(A) The individual's role as a planner and initiator. Was the individual the sole decision-maker or one of several contributing planners and initiators?

(B) The nature of the individual's planning and initiating activities. Was the individual involved in legitimate tax planning activities? Did the individual take steps to hide the actions at the planning stage? Did the individual commit any identifiable misconduct (legal, ethical, etc.)?

(C) The extent to which the individual knew or should have known that tax noncompliance could result from the course of conduct.

(D) The extent to which the individual acted in furtherance of the noncompliance, including, for example, efforts to conceal or disguise the transaction.

(E) The individual's role in identifying and soliciting others to participate in the actions reported, whether as parties to a common transaction or as parties to separate transactions.

(v) *Examples.* The operation of the provisions of paragraphs (c)(3)(ii) and (iii) of this section may be illustrated by the following examples. These examples are intended to illustrate the operation of the computational framework. They are not intended to provide standards against which the planning and initiating of an individual submitting a claim for award may be compared. The examples provide simplified descriptions of the facts relating to the claim for award, the information provided, and the facts relating to the underlying tax case. The application of section 7623(b)(3) and paragraph (c)(3) of this section will depend on the specific facts of each case.

Example 1. Individual A is employed in the finance department of a corporation (Corporation 1) and is responsible for performing research and drafting activities for, and at the direction of, Supervisor B. Individual A performed research on financial products for Supervisor B that Supervisor B used in advising Corporation 1 on a financial strategy. After Corporation 1 executed the strategy, Individual A submitted a claim for award under section 7623 along with information about the strategy to the IRS. The IRS initiated an examination of Corporation 1 based on Individual A's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Individual A did nothing to design or set into motion Corporation 1's activities. Individual A did not know or have reason to know that there were tax implications to the research activities. Accordingly, as a threshold matter, Individual A was not a planner and initiator of Corporation 1's strategy, and the award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section is not subject to reduction under section 7623(b)(3) and paragraph (c)(3) of this section.

Example 2. Individual C is employed in the HR department of a corporation (Corporation 2). Corporation 2 tasked Individual C with hiring a large number of temporary employees to meet Corporation 2's seasonal business demands. Individual C organized, scheduled, and conducted job fairs and job interviews to hire the seasonal employees. Individual C was not responsible for, had no knowledge of, and played no part in, classifying the seasonal employees for Federal income tax purposes. Individual C later discovered, however, that Corporation 2 classified the seasonal employees as independent contractors. After

discovering the misclassification, Individual C submitted a claim for award under section 7623 along with non-privileged information describing the employee misclassification to the IRS. The IRS initiated an examination of Corporation 2 based on Individual C's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would not be subject to a reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual C did not satisfy the requirements of the threshold determination of a planner and initiator. Individual C did not know and had no reason to know that her actions had tax implications or that Corporation 2 would misclassify the employees as independent contractors.

Example 3. Individual D is employed as a supervisor in the finance department of a corporation (Corporation 3) and is responsible for planning Corporation 3's overall financial strategy. Pursuant to the overall financial strategy, Individual D and others at Corporation 3, in good faith but incorrectly, planned tax-advantaged transactions. Individual D and others at Corporation 3 prepared documents needed to execute the transactions. After Corporation 3 executed the transactions, Individual D submitted a claim for award under section 7623 along with non-privileged information about the transactions to the IRS. The IRS initiated an examination of Corporation 3 based on Individual D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual D satisfies the requirements of the threshold determination of a planner and initiator. Individual D planned the transactions, prepared the necessary documents, and knew the tax implications of the transactions. Individual D was not the sole planner and initiator of Corporation 3's transactions. Individual D did nothing to conceal Corporation 3's activities. Corporation 3 had a good faith basis for claiming the disallowed tax benefits. On the basis of those facts, Individual D was a moderate-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual D's award by 0 to 33 percent.

Example 4. Same facts as *Example 3*, except that Individual D independently planned a high-risk tax avoidance transaction and prepared draft documents to execute the transaction. Individual D presented the transaction, along with the draft documents, to Corporation 3's Chief Financial Officer. Without the further involvement of Individual D, Corporation 3's Chief Financial Officer, Chief Executive Officer, and Board of Directors subsequently approved the execution of the transaction. After Corporation 3 executed the transaction, Individual D submitted a claim for award under section 7623 along with non-privileged information about the transaction to the IRS. The IRS initiated an examination of Corporation 3 based on Individual D's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual D satisfies the requirements of the threshold determination of a planner and initiator. Individual D planned the transaction, prepared the necessary documents, and knew the tax implications of the transaction. Working independently, Individual D designed and took steps to effectuate the transaction while knowing that the planning and initiating of the transaction was likely to result in tax noncompliance. Individual D, however, did not approve the execution of the transaction by Corporation 3 and, therefore, was not a decision-maker. On the basis of those facts, Individual D was a significant-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual D's award by 34 to 66 percent.

Example 5. Individual E is a financial planner. Individual E designed a financial product that the IRS identified as an abusive tax avoidance transaction. Individual E marketed the transaction to taxpayers, facilitated their participation in the transaction, and, initially, took steps to disguise the transaction. After several taxpayers had participated in the transaction, Individual E submitted a claim for award under section 7623 along with non-privileged information to the IRS about the transaction and the participating taxpayers. The IRS initiated an examination of the identified taxpayers based on Individual E's information, determined deficiencies in tax and penalties, and ultimately assessed and collected the tax and penalties as determined. Individual E was not criminally prosecuted. The award that would otherwise be determined based on the application of section 7623(b)(1) and paragraph (c)(1) of this section would be subject to an appropriate reduction under section 7623(b)(3) and paragraph (c)(3) of this section because Individual E satisfies the requirements of the threshold determination of a planner and initiator. Individual E designed the financial product, marketed and facilitated its use by taxpayers, and knew the tax implications of the transaction. Individual E was the sole designer of the transaction, solicited clients to participate in the transaction, and facilitated and attempted to conceal their participation in the transaction. Individual E knew that the planning and initiating of the taxpayers' participation in the transaction was likely to result in tax noncompliance. On the basis of those facts, Individual E was a primary-level planner and initiator. Accordingly, the Whistleblower Office will exercise its discretion to reduce Individual E's award by 67 to 100 percent.

(4) *Eligible affiliated claimants*. (i) *In general*. If the Whistleblower Office determines that an affiliated claimant, as defined in § 301.7623–2(f), filed a claim for award based on information obtained from an otherwise eligible individual for the purpose of avoiding any reduction in the amount of any award that could result if the claim was filed by the otherwise eligible individual, then the Whistleblower Office may, for purposes of determining the amount of an award, treat the claim as if it had been filed by the otherwise eligible individual. Any award to the affiliated claimant that filed the claim for award will be paid pursuant to paragraph (d)(1) of this section. See § 301.7623–1(b)(3) for rules regarding ineligible affiliated claimants.

(ii) *Example*. Individual A is employed as a supervisor in the finance department of Corporation. Individual A planned and initiated the actions that led to an underpayment of tax by Corporation, within the meaning of section 7623(b)(3) and paragraph (c)(3) of this section. To avoid the application of section 7623(b)(3) and paragraph (c)(3) of this section, Individual A provided non-privileged information to Individual B that described and documented specific facts relating to Corporation's tax underpayment. Individual B did not plan and initiate the actions that led to an underpayment of tax by Corporation. Individual B submitted to the IRS the information received from Individual A, alleging that Corporation owed additional taxes and filing a claim for award under section 7623. The IRS proceeded with an examination of Corporation based on the information provided by Individual B, determined a deficiency against Corporation and, ultimately, collected proceeds from Corporation. For purposes of determining the amount of any award payable to Individual B, as the individual that filed the claim for award, the Whistleblower Office may treat the claim as if it had been filed by Individual A.

(5) *Multiple claimants*. If two or more independent claims relate to the same collected proceeds, then the Whistleblower Office may evaluate the contribution of each individual to the action(s) that resulted in collected proceeds. The Whistleblower Office will determine whether the information submitted by each individual would have been obtained by the IRS as a result of the information previously submitted by any other individual. If the Whistleblower Office determines that multiple individuals submitted information that would not have been obtained based on a prior submission, then the Whistleblower Office will determine the amount of each individual's award based on the extent to which each individual contributed to the action(s). The aggregate award amount in cases involving two or more independent claims that relate to the same collected proceeds will not exceed the maximum award amount that could have resulted under section 7623(b)(1) or section 7623(b)(2), as applicable, subject to the award reduction provisions of section 7623(b)(3), if a single claim had been submitted.

(d) *Payment of Award*. (1) *In general*. The IRS will pay any award determined under section 7623 and §§ 301.7623–1 through 301.7623–4 to the individual(s)

that filed the corresponding claim for award. Payment of an award will be made as promptly as the circumstances permit, but not until there has been a final determination of tax with respect to the action(s), as defined in paragraph (d)(2) of this section, the Whistleblower Office has determined the award, and all appeals of the Whistleblower Office's determination are final or the individual has executed an award consent form agreeing to the amount of the award and waiving the individual's right to appeal the determination.

(2) *Final determination of tax*. For purposes of §§ 301.7623–1 through 301.7623–4, a *final determination of tax* means that the proceeds resulting from the action(s) subject to the award determination have been collected and either the statutory period for filing a claim for refund has expired or the taxpayer(s) subject to the action(s) and the IRS have agreed with finality to the tax or other liabilities for the period(s) at issue and the taxpayer(s) have waived the right to file a claim for refund.

(3) *Joint Claimants*. If multiple individuals jointly submit a claim for award, the IRS will pay any award in equal shares to the joint claimants unless the joint claimants specify a different allocation in a written agreement, signed by all the joint claimants and notarized, and submitted with the claim for award. The aggregate award payment in cases involving joint claimants will be within the award percentage range of section 7623(b)(1) or section 7623(b)(2), as applicable, and subject to the award reduction provisions of section 7623(b)(3).

(4) *Deceased Claimant*. If a claimant dies before or during the whistleblower administrative proceeding, the Whistleblower Office will substitute an executor, administrator, or other legal representative on behalf of the deceased claimant for purposes of conducting the whistleblower administrative proceeding.

(5) *Tax treatment of award.* All awards are subject to current Federal tax reporting and withholding requirements.

(e) *Effective/applicability date*. When finalized, § 301.7623–4 is proposed to apply to information submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and to claims for award under section 7623(b) that are open as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

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U.S.-Norway Agreement Regarding the Sourcing of Remuneration for Government Services and Social Security Payments

Announcement 2013–5

The following is a copy of the Competent Authority Agreement entered into by the competent authorities of the United States of America and the Kingdom of Norway clarifying the meaning of "remuneration described in Article 17 (Governmental Functions)" and "payments described in Article 19 (Social Security Payments)" as those phrases are used in the last sentence of paragraph 6 of Article 24 (Source of Income) of the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed on December 3, 1971, and as amended by the Protocol signed on September 19, 1980.

The text of the Competent Authority Agreement is as follows:

COMPETENT AUTHORITY AGREEMENT

The Competent Authorities of the United States of America and the Kingdom of Norway hereby enter into the following mutual agreement (the "Agreement") clarifying the meaning of "remuneration described in Article 17 (Governmental Functions)" and "payments described in Article 19 (Social Security Payments)" as those phrases are used in the last sentence of paragraph 6 of Article 24 (Source of Income) of the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed on December 3, 1971, and as amended by the Protocol signed on September 19, 1980 (the "Treaty"). This Agreement is entered into under paragraph 2 of Article 27 (Mutual Agreement Procedure) of the Treaty.

Article 24 provides, in relevant part:

> For purposes of this Convention:
>
> (6) Income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, shall be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State ... Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 17 (Governmental Functions) and payments described in Article 19 (Social Security Payments) shall be treated as income from sources within a Contracting State only if paid by or from the public funds of that Contracting State or a political subdivision or local authority thereof.

Article 17 provides as follows:

> Wages, salaries, and similar remuneration, including pensions or similar benefits, paid by or from public funds of one of the Contracting States, or a political subdivision or local authority thereof, to a citizen of that Contracting State for labor or personal services performed for that Contracting State, or for any of its political subdivisions or local authorities, in the discharge of governmental functions shall be exempt from tax by the other Contracting State.
>
> Article 19 provides as follows: Social Security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State. This article shall not apply to payments described in Article 17 (Governmental Functions).

The Competent Authorities agree that for purposes of the last sentence of Article 24(6):

(1) The phrase "remuneration described in Article 17 (Governmental Functions)" is limited to wages, salaries, and similar remuneration, including pensions or similar benefits, paid by or from public funds of one of the Contracting States, or a political subdivision or local authority thereof, to a citizen of that Contracting State for labor or personal services performed for that Contracting State, or for any of its political subdivisions or local authorities, in the discharge of governmental functions. Thus, for example, remuneration paid by or from public funds of Norway to a person who is not a citizen of Norway is not remuneration described in Article 17 and, consequently, would not be treated as income from sources within Norway pursuant to the last sentence of Article 24(6). Under the first sentence of Article 24(6), such remuneration would be treated as income from sources within a Contracting State to the extent that such services are performed in that Contracting State.

(2) The phrase "payments described in Article 19 (Social Security Payments)" means Social Security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State or a citizen of the United States, without regard to the location of the performance of the personal services underlying the entitlement to the payments. Thus, for example, if the United States makes a Social Security payment to a resident of Norway based on personal services that were performed partly within the United States and partly without the United States, the entire amount of the payment will be treated as income from sources within the United States.

The Competent Authorities also confirm that remuneration that is not described in Article 17 is subject to the provisions of the applicable article, *e.g.*, Article 14 (Dependent Personal Services) or Article 18 (Private Pensions and Annuities).

The Competent Authorities also agree that if remuneration described in Article 17 is paid to a citizen of Norway who is also either a citizen of the United States or a lawful permanent resident of the United States, then the United States may tax the payment under paragraph 3 of Article 22 (General Rules of Taxation) and, solely to the extent necessary to alleviate double taxation under paragraph 1 of Article 23 (Relief from Double Taxation), will treat the entire amount of the payment as income from sources without the United States.

Agreed to by the undersigned Competent Authorities:

Michael Danilack
United States Competent Authority
November 27, 2012

Stig Sollund
Norwegian Competent Authority
December 10, 2012

Regulations Regarding the Application of Section 172(h) Including Consolidated Groups; Correction

Announcement 2013–6

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–140668–07, 2012–43 I.R.B. 501) that was published in the **Federal Register** on Monday, September 17, 2012 (77 FR 57452). The proposed regulation provides guidance regarding the treatment of corporate equity reduction transactions (CERTs), including the treatment of multiple step plans for the acquisition of stock and CERTs involving members of a consolidated group.

FOR FURTHER INFORMATION CONTACT: Amie Colwell Breslow or Marie C. Milnes-Vasquez at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–140668–07) that is the subject of these corrections are under sections 172 and 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–140668–07) contains

errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–140668–07), that was the subject of FR Doc. 2012–22838, is corrected as follows:

1. On page 57452, in the preamble, column 1, under the caption "ADDRESSES", line 10, the language "Service, 1111 Constitution Avenue NW.," is corrected to read "Service, 1111 Constitution Avenue, NW,".

2. On page 57453, in the preamble, column 2, under the caption "Background", line 16 from the bottom of the page, the language "return group; (4) application of these" is corrected to read "group; (4) application of these".

3. On page 57456, in the preamble, column 3, under the paragraph heading *C. Loss Limitation Years*, line 6 from the bottom of the first paragraph, the language "section 172 and 381 are applied as if the" is corrected to read "sections 172 and 381 are applied as if the".

§ 1.172(h)–2 [Corrected]

4. On Page 57462, column 1, under the paragraph heading **§1.172(h)–2 Computation of a CERIL.**, fourth paragraph of the column, line 6, the language "addition, under the principles of section" is corrected to read "addition, under the principles of".

§ 1.172(h)–4 [Corrected]

5. On Page 57465, column 1, under the paragraph heading **§1.172(h)–4 Special rules for predecessors and successors.**, second full paragraph of the column, line 13, the language "occurred. See §§1.172(h)–5(a) (defining" is corrected to read "occurred. See §1.172(h)–5(a) (defining".

6. On Page 57465, column 3, under the same paragraph heading, line 21 from the top of the column, the language "interest paid or accrued during the 3 year" is corrected to read "interest paid or accrued during the three-year".

§ 1.1502–72 [Corrected]

7. On page 57471, column 2, under the paragraph heading **§ 1.1502–72 Corporate equity reduction transactions.**, lines 10 and 11 from the top of the column, the language "[$10,000,000 + $100,000 + 250,000 + 175,000]. See §1.172(h)–2(b)(3) for rules" is corrected to read "[$10,000,000 + $100,000 + $250,000 + $175,000]. See §1.172(h)–2(b)(3) for rules".

8. On page 57473, column 1, under the same paragraph heading, line 22 of the second paragraph, the language "([$1,400 + $1,000 + 1,200]/3). Because T is" is corrected to read "([$1,400 + $1,000 + $1,200]/3). Because T is"

9. On page 57473, column 1, under the same paragraph heading, line 2 from the bottom of the second paragraph, the language "([$1,400 + $1,000 + 1,200 + $600 + $200 +)" is corrected to read "([$1,400 + $1,000 + $1,200 + $600 + $200 +)"

10. On page 57475, column 3, under the same paragraph heading, line 11 of the second full paragraph of the column, the language "172(h)(3)(C) §1.172(h)–1(c)(3) and (f), and" is corrected to read "172(h)(3)(C), §1.172(h)–1(c)(3) and (f), and".

Guy Traynor,
Federal Register Liaison,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on October 22, 2012, 8:45 a.m., and published in the issue of the Federal Register for October 23, 2012, 77 F.R. 64768)

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property

Announcement 2013–7

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Technical amendments.

SUMMARY: This document contains amendments to temporary regulations (T.D. 9564, 2012–4 I.R.B. 614) relating to guidance regarding deduction and capitalization of expenditures related to tangible property. These amendments change the applicability dates of the temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the temporary regulations for taxable years beginning on or after January 1, 2012. The amendments to the temporary regulations will affect all taxpayers that acquire, produce, or improve tangible property.

DATES: These amendments are effective December 17, 2012.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.162–3T, 1.162–4T, 1.162–11T, 1.263(a)–1T, 1.263(a)–2T, 1.263(a)–3T, and 1.263(a)–6T, Merrill D. Feldstein or Alan S. Williams, Office of Associate Chief Counsel (Income Tax & Accounting), (202) 622–4950 (not a toll-free call); Concerning §§ 1.165–2T, 1.167(a)–4T, 1.167(a)–7T, 1.167(a)–8T, 1.168(i)–1T, 1.168(i)–7T, 1.168(i)–8T, 1.263A–1T, and 1.1016–3T, Kathleen Reed or Patrick Clinton, Office Associate Chief Counsel (Income Tax & Accounting), (202) 622–4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these amendments are under sections 162, 165, 167, 168, 263, 263A, and 1016 of the Internal Revenue Code. The temporary regulations (T.D. 9564) were published in the **Federal Register** on Tuesday, December 27, 2011 (76 FR 81060). Because the temporary regulations are applicable to taxable years beginning on or after January 1, 2012, the IRS and the Treasury Department are concerned that taxpayers are expending resources to comply with temporary regulations that may not be consistent with forthcoming final regulations. For more information about the temporary regulations and these amendments, see Notice 2012–73, 2012–51 I.R.B. 713.

Taxpayers choosing to apply the provisions of the temporary regulations to taxable years beginning on or after January 1, 2012, may continue to rely on the procedures by which a taxpayer may obtain the automatic consent of the Commissioner of Internal Revenue to change its methods of accounting provided in Revenue

Procedures 2012–19, 2012–14 I.R.B. 689, and 2012–20, 2012–14 I.R.B. 700, both of which are available at IRS.gov.

Need for amendments

For the reasons discussed, the IRS and the Treasury Department have decided to amend the applicability dates of the temporary regulations.

* * * * *

Amendments of publication

Accordingly, 26 CFR Part 1 is amended by making the following technical amendments.

PART 1—INCOME TAXES

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

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

Section 1.168(i)–1T also issued under 26 U.S.C. 168(i)(4). * * *

Par. 2. Section 1.162–3T is amended by revising paragraph (j) to read as follows:

§ 1.162–3T Materials and supplies (temporary)

* * * * *

(j) *Effective/applicability date*—(1) *In general*. This section generally applies to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2014. However, a taxpayer may apply paragraph (e) of this section (the optional method of accounting for rotable and temporary spare parts) to taxable years beginning on or after January 1, 2014. Section 1.162–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. Except for paragraph (e) of this section, a taxpayer may choose to apply this section to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraph (e) of this section (the optional method of accounting for rotable and temporary spare parts) to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 3. Section 1.162–4T is amended by revising paragraph (c) to read as follows:

§ 1.162–4T Repairs (temporary).

* * * * *

(c) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.162–4 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 4. Section 1.162–11T is amended by revising paragraph (c) to read as follows:

§ 1.162–11T Rentals (temporary).

* * * * *

(c) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.162–11 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 5. Section 1.165–2T is amended by revising paragraph (d) to read as follows:

§ 1.165–2T Obsolescence of nondepreciable property (temporary).

* * * * *

(d) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.165–2 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 6. Section 1.167(a)–4T is amended by:

1. Revising paragraph (b)(1).

2. Revising the heading and introductory text to paragraph (b)(2).

The revisions read as follows:

§ 1.167(a)–4T Leased property (temporary).

* * * * *

(b) * * *

(1) *In general*. Except as provided in paragraphs (b)(2) and (b)(3) of this section, this section applies to taxable years beginning on or after January 1, 2014.

(2) *Application of this section to leasehold improvements placed in service after December 31, 1986, in taxable years beginning before January 1, 2014*. For leasehold improvements placed in service after December 31, 1986, in taxable years beginning before January 1, 2014, a taxpayer may—

* * * * *

Par. 7. Section 1.167(a)–7T is amended by revising paragraph (f) to read as follows:

§ 1.167(a)–7T Accounting for depreciable property (temporary).

* * * * *

(f) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.167(a)–7 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 8. Section 1.167(a)–8T is amended by revising paragraph (h) to read as follows:

§ 1.167(a)–8T Retirements (temporary).

* * * * *

(h) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.167(a)–8 as contained in

26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 9. Section 1.168(i)–1T is amended by:

1. Revising paragraph (m)(1).

2. Redesignating paragraph (m)(3) as paragraph (m)(4).

3. Redesignating paragraph (m)(2) as paragraph (m)(3) and adding new paragraph (m)(2).

4. In redesignated paragraph (m)(3), last sentence, the language "paragraph (m)(2)" is removed and "paragraph (m)(3)" is added in its place.

The revision and addition read as follows:

§ 1.168(i)–1T General asset accounts (temporary).

* * * * *

(m) * * *

(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.168(i)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 10. Section 1.168(i)–7T is amended by:

1. Revising paragraph (e)(1).

2. Redesignating paragraph (e)(3) as paragraph (e)(4).

3. Redesignating paragraph (e)(2) as paragraph (e)(3) and adding new paragraph (e)(2).

The revision and addition read as follows:

§ 1.168(i)–7T Accounting for MACRS property (temporary).

* * * * *

(e) * * *

(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 11. Section 1.168(i)–8T is amended by:

1. Revising paragraph (i)(1).

2. Redesignating paragraph (i)(3) as paragraph (i)(4).

3. Redesignating paragraph (i)(2) as paragraph (i)(3) and adding new paragraph (i)(2).

The revision and addition read as follows:

§ 1.168(i)–8T Dispositions of MACRS property (temporary).

* * * * *

(i) * * *

(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 12. Section 1.263(a)–0T is amended by:

1. Adding new entries in the table of contents for § 1.263(a)–1T(g)(1) and (g)(2).

2. Adding new entries in the table of contents for § 1.263(a)–2T(k)(1) and (k)(2).

3. Adding new entries in the table of contents for § 1.263(a)–3T(p)(1) and (p)(2).

The additions read as follows:

§ 1.263(a)–0T Table of Contents (temporary).

* * * * *

§ 1.263(a)–1T Capital expenditures; in general (temporary).

* * * * *

(g)* * *

(1) In general.

(2) Optional early application.

* * * * *

§ 1.263(a)–2T Amounts paid to acquire or produce tangible property (temporary).

* * * * *

(k)* * *

(1) In general.

(2) Optional early application.

* * * * *

§ 1.263(a)–3T Amounts paid to improve tangible property (temporary).

* * * * *

(p)* * *

(1) In general.

(2) Optional early application.

* * * * *

Par. 13. Section 1.263(a)–1T is amended by revising paragraph (g) to read as follows:

§ 1.263(a)–1T Capital expenditures: in general (temporary).

* * * * *

(g) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.263(a)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 14. Section 1.263(a)–2T is amended by revising paragraph (k) to read as follows:

§ 1.263(a)–2T Amounts paid to acquire or produce tangible property (temporary).

* * * * *

(k) *Effective/applicability date*—(1) *In general*. Except for paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section, this section generally applies to taxable years beginning on or after January 1, 2014. Paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section apply to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2014. Section 1.263(a)–2 as contained in 26 CFR part 1 edition revised as of April 1, 2011,

applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. Except for paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section, a taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012.

* * * * *

Par. 15. Section 1.263(a)–3T is amended by revising paragraph (p) to read as follows:

§ 1.263(a)–3T Amounts paid to improve tangible property (temporary).

* * * * *

(p) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.263(a)–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 16. Section 1.263(a)–6T is amended by revising paragraph (c) to read as follows:

§ 1.263(a)–6T Election to deduct or capitalize certain expenditures (temporary).

* * * * *

(c) *Effective/applicability date*—(1) *In general*. This section applies to taxable years beginning on or after January 1, 2014. Section 1.263(a)–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014. For the effective dates of the enumerated election provisions, see those Internal Revenue Code sections and the regulations thereunder.

(2) *Optional early application*. A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

Par. 17. Section 1.263A–1T is amended by:

1. Revising paragraph (m)(2).

2. Redesignating paragraph (m)(3) as paragraph (n).

The revision reads as follows:

§ 1.263A–1T Uniform capitalization of costs (temporary).

* * * * *

(m) * * *

(2) Paragraph (b)(14), the introductory phrase of paragraph (c)(4), the last sentence of paragraphs (e)(2)(i)(A) and (e)(2)(ii)(E), paragraph (l), and paragraph (m)(2) of this section apply to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2014. Section 1.263A–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014. A taxpayer may choose to apply paragraph (b)(14), the introductory text of paragraph (c)(4), the last sentence of paragraphs (e)(2)(i)(A) and (e)(2)(ii)(E), and paragraph (l) of this section to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012.

* * * * *

Par. 18. Section 1.1016–3T is amended by revising paragraph (j)(3) to read as follows:

§ 1.1016–3T Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 13, 1913 (temporary).

* * * * *

(j) * * *

(3) *Application of § 1.1016–3T(a)(1)(ii)*—(i) *In general*. Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after January 1, 2014. Section 1.1016–3(a)(1)(ii) as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(ii) *Optional early application*. A taxpayer may choose to apply paragraph (a)(1)(ii) of this section to taxable years beginning on or after January 1, 2012.

* * * * *

Guy R. Traynor,
Federal Register Liaison,
Publication & Regulation Branch,
Legal Processing Division,
Associate Chief Counsel
Procedure & Administration.

(Filed by the Office of the Federal Register on December 14, 2012, 8:45 a.m., and published in the issue of the Federal Register for December 17, 2012, 77 F.R. 74583)

Announcement 2013–10

Because of recent changes made by the American Taxpayer Relief Act of 2012, the following update has been issued for Publication 1220, *Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically*, revised August 13, 2012.

Payer "A" Record — Record Layout Positions 28–43 for Form 1098-Mortgage Interest Statement (pg 43) – Amount Code 4, Mortgage Insurance Premium has been reinstated.

Record Name: Payer "A" Record (continued)				
Field Position	**Field Title**	**Length**	**Description and Remarks**	
28–43	Amount Codes	16		
Amount Codes **Form 1098** — Mortgage Interest Statement			For Reporting Payments on Form 1098:	
			Amount Code	**Amount Type**
			1.	Mortgage interest received from payer(s)/borrower(s)
			2.	Points paid on the purchase of a principal residence
			3.	Refund (or credit) of overpaid interest
			4.	**Mortgage Insurance Premium**
			5.	Blank (Filer's use)

Effect on Other Documents

Revenue Procedure 2012–30, 2012–33 I.R.B. 165, is updated.

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.
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