

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2020-8**  
**February 18, 2020**

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.

## EMPLOYMENT TAX, INCOME TAX

### **T.D. 9892, page 439.**

These final regulations update the due dates and available extensions of time to file certain tax returns and information returns, to reflect statutory requirements set by section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 and section 201 of the Protecting Americans from Tax Hikes Act of 2015. Additionally, the regulations remove a provision for electing large partnerships that was made obsolete by section 1101(b)(1) of the Bipartisan Budget Act of 2015. The regulations also delete temporary regulations.

## EXEMPT ORGANIZATIONS

### **Rev. Proc. 2020-8, page 447.**

This revenue procedure modifies Rev. Proc. 2020-5 to allow for the new electronic submission process of the Form 1023. This revenue procedure also modifies language related to the submission of written requests of Canadian charities to be listed on the Tax Exempt Organizations Search database or for a determination on private foundation status. Finally, this revenue procedure provides a 90 day transition relief period, during which paper Form 1023 applications will be accepted and processed by EO Determinations.

## INCOME TAX

### **Rev. Rul. 2020-4, page 444.**

This revenue ruling clarifies the manner to properly compute the income limits applicable to the low-income housing credit under § 42 of the Internal Revenue Code. The Consolidated Appropriations Act of 2018 added a new minimum set-aside test, the average income test (§ 42(g)(1)(C)), to the existing minimum set-aside tests available to owners of a low-income housing project. This revenue ruling addresses the additional income limits available in the average income test.

### **T.D. 9891, page 419.**

These final regulations would finalize the rules in the temporary regulations under REG-127203-15, published January 19, 2017. These final regulations provide rules that address certain transfers of appreciated property by United States persons to partnerships with foreign partners that are related to the transferor. Specifically, these final regulations override the rules providing for nonrecognition of gain on a contribution of property to a partnership in exchange for an interest in the partnership unless the partnership complies with certain requirement. Those requirements, in turn, are intended to prevent the shifting of tax consequences of pre-contribution gain to the related foreign partner by ensuring that built-in gain with respect to the contributed property will be subject to U.S. tax.

# The IRS Mission

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

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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# Part I

26 CFR 1.721(c)

## T.D. 9891

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Transfers of Certain Property by U.S. Persons to Partnerships with Related Foreign Partners

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance applicable to transfers of appreciated property by U.S. persons to partnerships with foreign partners related to the transferor. Specifically, when a U.S. person transfers appreciated property to a partnership with a foreign partner related to the transferor, the regulations override the general non-recognition rule unless the partnership adopts the remedial allocation method and certain other requirements are satisfied. The regulations affect U.S. partners in domestic or foreign partnerships.

DATES: *Effective Date:* These regulations are effective on January 17, 2020.

*Applicability Dates:* For dates of applicability, see §§1.197-2(l)(5)(i), 1.704-1(f), 1.704-3(g)(1), 1.721(c)-1(e), 1.721(c)-2(e), 1.721(c)-3(e), 1.721(c)-4(d), 1.721(c)-5(g), 1.721(c)-6(g), and 1.6038B-2(j)(4).

FOR FURTHER INFORMATION CONTACT: Chadwick Rowland, (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Section 721(c) was added to the Internal Revenue Code (the “Code”) by the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788). In section 721(c), Congress granted the Secretary regulatory authority to override the application of the nonrecognition provision of section 721(a) to gain realized on the transfer of property to a partnership (domestic or foreign) if the gain, when recognized, would be includible in the gross income of a person other than a U.S. person.

On August 6, 2015, the Department of the Treasury (the “Treasury Department”) and the IRS issued Notice 2015-54, 2015-34 I.R.B. 210, which announces an intent to issue regulations under section 721(c).

On January 19, 2017, the Treasury Department and the IRS published temporary and final regulations (T.D. 9814) under sections 721(c), 197, 704, and 6038B in the **Federal Register** (82 FR 7582) (the “temporary regulations”). A notice of proposed rulemaking (REG-127203-15) cross-referencing the temporary regulations was published in the same issue of the **Federal Register** (82 FR 6368) (the “proposed regulations” and together with the temporary regulations the “2017 regulations”).

No public hearing on the 2017 regulations was requested or held; however, the Treasury Department and the IRS received one written comment with respect to the 2017 regulations. The Comment Summary and Explanation of Revisions section summarizes the comment and discusses relevant provisions of the 2017 regulations.

#### Comment Summary and Explanation of Revisions

##### I. Overview

The Treasury Department and the IRS received one comment regarding the 2017 regulations. After full consideration of the comment, this Treasury Decision adopts the rules contained in the proposed reg-

ulations with certain modifications. This Comment Summary and Explanation of Provisions section summarizes the comment received, explains the Treasury Department and the IRS’s response to that comment, and discusses the modifications to the proposed regulations adopted in this Treasury Decision.

##### II. Comment

The comment expressed concern that an intercompany transaction between a U.S. person and a foreign person may result in a deemed or “accidental partnership,” despite no intention by the partners to create one and no realization one was created. As a consequence, the requirements under the regulations would not be met to avoid gain recognition under section 721(c). The comment recommended an additional exception to gain recognition under section 721(c) in these circumstances if the taxpayer has reasonably determined that the property in question was not contributed to a partnership, the taxpayer is not amortizing or depreciating the property for section 704(b) purposes with respect to the arrangement for which the property owner has entered into a transaction with a related party, and all parties involved consistently treat the arrangement, with respect to the subject property, as one to which subchapter K of the Code does not apply.

The final regulations do not adopt this recommendation. The issue of what constitutes deemed or accidental partnerships and any relief that should be provided for them is not unique to the application of these regulations and, thus, goes beyond the scope of this Treasury Decision. Nevertheless, when an accidental partnership exists as the comment describes, the filing obligations under §1.6038B-2(a)(1)(iii) (which cross references the reporting requirements under §1.721(c)-6(b)) will have not been fulfilled and, therefore, the limitations period on assessment under section 6501(c)(8) will remain open until three years after the IRS is provided the information required to be reported under

section 6038B. Accordingly, a taxpayer that makes a contribution to an accidental partnership could file amended returns applying the gain deferral method, including fulfilling its reporting requirements (*see* §1.721(c)-6(f)).

### III. Modifications and Clarifications

#### A. Related party definition

Section 1.721(c)-1T(b) provides definitions that apply for purposes of the 2017 regulations. Section 1.721(c)-1T(b) (12) provides that a related person is, with respect to a U.S. transferor, a person that is related (within the meaning of section 267(b) or 707(b)(1)) to the U.S. transferor. A related foreign person is, with respect to a U.S. transferor, a related person (other than a partnership) that is not a U.S. person. *See* §1.721(c)-1T(b)(11).

The Treasury Department and the IRS have determined that a modification to the definition of related person is appropriate to limit the application of these rules in certain situations. Specifically, a new paragraph is added in §1.721(c)-1(b)(12) that provides that for purposes of determining if a person is a related person with respect to a U.S. transferor, section 267(b) is applied without regard to section 267(c) (3). This modification to the definition of related person provides relief when certain foreign individual partners of a partnership would be treated as a related person with respect to a domestic corporation by reason of section 267(c)(3). This change is consistent with section 707(b)(3) and is intended to address the following specific fact pattern, or a variation thereof:

A partnership (PRS1) has two partners: a foreign individual that holds 4 percent of the interests in PRS1's capital and profits and a U.S. individual (unrelated to the foreign individual) that holds 96 percent of the interests in PRS1's capital and profits. PRS1 wholly owns a domestic corporation (UST) and holds 90 percent of the interests in a lower-tier partnership's (PRS2) capital and profits. In Year 1, UST and PRS2 form a new partnership (PRS3); as part of the formation, UST contributes section 721(c) property (as defined in §1.721(c)-1(b)(15)) in return for a 90 percent interest in PRS3's capital and profits, and a U.S. individual (unrelated to UST)

contributes cash in return for the remaining interest in PRS3's capital and profits.

For purposes of determining whether PRS3 is a section 721(c) partnership (as defined in §1.721(c)-1(b)(14)), the rules of section 267(b) must be applied to determine whether the foreign individual is a related foreign person with respect to UST. Section 267(b)(2) provides that an individual is related to a corporation if the individual holds, directly or indirectly, more than 50 percent in value of the corporation's outstanding stock. In applying section 267(b) (2), however, the constructive stock ownership rules of section 267(c) must be taken into account. Section 267(c)(1) provides that stock owned, directly or indirectly, by a partnership will be treated as owned proportionally by its partners. Section 267(c) (5) provides that stock owned constructively by reason of section 267(c)(1) will be treated as actually owned for purposes of applying section 267(c)(3). Section 267(c) (3) provides that an individual owning any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner. But section 267(c)(3) will not apply, and will therefore not attribute stock ownership to an individual partner, if the individual does not actually own, or constructively own under section 267(c)(1), stock in the corporation that is owned directly or indirectly by or for another partner of the partnership. *See* §1.267(c)-1(a)(2).

In the facts provided, section 267(c)(1) treats the foreign individual as constructively owning a proportionate share of the UST stock that is owned by PRS1; accordingly, the foreign individual is treated as constructively owning 4 percent of the UST stock. And because the foreign individual constructively owns stock in UST under section 267(c)(1), section 267(c)(3) attributes the stock owned by the U.S. individual (the other partner in PRS1) to the foreign individual. As a result, the foreign individual is treated as owning all of the value of UST's outstanding stock for purposes of determining relatedness under section 267(b)(2); therefore, the foreign individual is a related person with respect to the U.S. transferor under the rule provided in §1.721(c)-1T(b) (12) of the 2017 regulations. However, because the modified definition of related person provided in this Treasury Decision applies section 267(b) without regard to

section 267(c)(3), the foreign individual will not be treated as a related person under §1.721(c)-1(b)(12)(ii). As a consequence, PRS3 is not a section 721(c) partnership.

#### B. Consistent allocation method

Section 1.721(c)-3T(b) of the 2017 regulations provides the requirements of the gain deferral method. Among the requirements, a section 721(c) partnership is required to adopt the remedial allocation method and apply the consistent allocation method with respect to section 721(c) property. The consistent allocation method, as described in §1.721(c)-3T(c) (1), provides that for each taxable year of a section 721(c) partnership in which there is remaining built-in gain in section 721(c) property, the section 721(c) partnership must allocate each book item of income, gain, deduction, and loss with respect to the section 721(c) property to the U.S. transferor in the same percentage for the taxable year. Although the consistent allocation method requires each book item of income, gain, deduction, and loss with respect to section 721(c) property to be allocated to a U.S. transferor in the same percentage for a single taxable year, the consistent allocation method does not require the allocations to be in the same percentage among all taxable years in which the gain deferral method is applied. The consistent allocation method, therefore, prevents a U.S. transferor from rendering the remedial allocation method ineffective by, for example, having the partnership allocate a higher percentage of book depreciation to the U.S. transferor than the U.S. transferor's percentage share of income or gain with respect to the section 721(c) property. *See* preamble to the temporary regulations (82 FR at 7589). The consistent allocation method, therefore, ensures that the built-in gain in section 721(c) property will be subject to U.S. tax.

The Treasury Department and the IRS have determined that a modification to §1.721(c)-3T(c)(1) of the 2017 regulations is appropriate to clarify the application of the consistent allocation method. Specifically, a new sentence is added in §1.721(c)-3(c)(1); the new sentence provides that upon a variation (as described in §1.706-4(a)(1)) of a U.S. transferor's interest in a section 721(c) partnership,



book items with respect to section 721(c) property that are allocated under the interim closing method (as described in §1.706-4) will be treated as allocated in the same percentage for purposes of applying the consistent allocation method in a single taxable year unless the variation results from a transaction undertaken with a principal purpose of avoiding the tax consequences of the gain deferral method.

If any partner's interest in a partnership changes during a taxable year of the partnership, section 706(d) grants the Secretary regulatory authority to prescribe rules for determining each partner's distributive share of any partnership item for the taxable year that takes into account the partner's varying interests in the partnership. The variations described in section 706(d) include, among other things, a reduction in a partner's interest in a partnership, including a reduction that occurs due to the entry of a new partner. *See* §1.706-4(a). If a partner's interest in a partnership is reduced during a taxable year, but not completely disposed of, the taxable year of the partnership will not close as a result of the variation. *See* section 706(c)(2)(B). Instead, if a variation occurs during the taxable year of a partnership, §1.706-4(a)(3) generally allows the partnership to choose how to determine each partner's share of the partnership items for the taxable year under either the proration method or the interim closing method. *See* §1.706-4(a)(3)(iii). The interim closing method divides the taxable year of the partnership into segments based on the interim closings of the partnership's books; the segments are then used to apportion the partnership items for the year among its segments, and to determine, taking into account the partners' interests during each segment, the partners' distributive shares of the partnership items. *See* generally §1.706-4(a)(3).

The modification to the consistent allocation method when the interim closing method is applied is intended to clarify that a U.S. transferor continues to comply with the consistent allocation method following certain economic events that do not close the taxable year of the section 721(c) partnership. Given the high thresholds required to be subject to these rules, the Treasury Department and the IRS have determined that allowing the partnership

to choose the proration method is not appropriate for the consistent allocation method: a section 721(c) partnership will have the resources and capabilities necessary to comply with the more precise interim closing method without imposing an undue burden on the partnership.

### C. Reporting

The final regulations include the reporting requirements provided in the 2017 regulations regarding both gain deferral contributions and the annual reporting requirements with respect to section 721(c) property to which the gain deferral method applies. The 2017 regulations require much of the reporting to be on statements attached to returns. *See* §§1.721(c)-6T and 1.6038B-2T. Since the issuance of the 2017 regulations, however, the IRS has updated and added new schedules to Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, to facilitate compliance with these reporting requirements. The IRS has also issued new Form 8838-P, *Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c))*. The purpose of these changes was to include the information that previously was reported on the statements. The final regulations reference and require the use of these forms and schedules to fulfill the reporting requirements. For tax returns filed before July 17, 2020, however, §1.721(c)-6(g)(3)(ii) provides relief for reporting that met the requirements of §1.721(c)-6T (as in effect before January 1, 2020).

The final regulations also clarify the duration for which the U.S. transferor must extend the period of limitations on the assessment of tax under §1.721(c)-6(b). Section 1.721(c)-6(b)(5) clarifies the relevant periods to which Form 8838-P applies by measuring each period by the number of months occurring after the relevant date; accordingly, the final regulations measure each period by a fixed term that is determinable on the date of contribution. The final regulations also provide a similar clarification in §1.721(c)-6(f)(2).

### D. Technical terminations

Section 708(b) generally provides that a partnership will terminate if the

partnership ceases to do business. Before the enactment of the Tax Cuts and Jobs Act, Public Law 115-97 (2017) (the "TCJA"), section 708(b)(1)(B) provided another way for a partnership to terminate: a partnership terminated if within any 12-month period, 50 percent or more of the total interest in partnership capital and profits was sold or exchanged. The termination described in section 708(b)(1)(B) is commonly referred to as a "technical termination." The regulations in §1.708-1(b)(4) provide that a technical termination results in a deemed contribution of all the terminated partnership's assets and liabilities to a new partnership in exchange for an interest in the new partnership, followed by a deemed distribution of interests in the new partnership to both the purchasing partners and the remaining partners.

The TCJA repealed section 708(b)(1)(B) for all partnership taxable years beginning after December 31, 2017; therefore, technical terminations no longer apply. *See* Conference Report on H.R. 1, Tax Cuts and Jobs Act, H. Rept. 115-446, at 416.

The 2017 regulations provide rules regarding technical terminations in two contexts: they provide that a partnership will not be treated as a section 721(c) partnership (as defined in §1.721(c)-1T(b)(14)) following a deemed contribution that occurs as a result of a technical termination, and they treat certain technical terminations as successor events for purposes of the acceleration event exceptions provided in §1.721(c)-5T. *See* §§1.721(c)-2T(d)(2) and 1.721(c)-5T(c)(4).

The rules in the 2017 regulations regarding technical terminations are retained in this Treasury Decision. Although the TCJA repealed section 708(b)(1)(B), the applicability date for these final regulations relates back to the applicability date provided in the 2017 regulations, which is before the effective date provided in the TCJA. Accordingly, the rules provided in this Treasury Decision regarding technical terminations will have limited applicability; the rules will only apply to technical terminations occurring on or after the applicability date provided in the 2017 regulations but before the effective date for the repeal of section 708(b)(1)(B) provided in the TCJA.

## E. Request for comments

Under the final regulations, as well as the 2017 regulations, stock is excluded from the definition of section 721(c) property and, therefore, a contribution of stock of a controlled foreign corporation (within the meaning of section 957) (“CFC”) to a section 721(c) partnership is not subject to the final regulations. However, the Treasury Department and the IRS are concerned that taxpayers may avail themselves of partnerships to shift the tax liability, in whole or in part, with respect to earnings of a CFC attributable to subpart F income (within the meaning of section 952) or tested income (within the meaning of section 951A(c)(2)(A) and §1.951A-2(b)(1)) to a related foreign partner that is not owned (within the meaning of section 958(a)) by a United States shareholder (within the meaning of section 951(b)). The Treasury Department and the IRS are studying the use of partnerships in this context, including under what circumstances it may be appropriate to apply section 721(c) to a contribution of stock of a CFC to a partnership. The Treasury Department and the IRS request comments on this matter.

## Special Analyses

### I. Regulatory Planning and Review

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Department of Treasury and the Office of Management and Budget (OMB).

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations include a \$1,000,000 de minimis exception for certain transfers and

exclude contributions of tangible property with built-in gain that does not exceed \$20,000. In addition, the regulations apply only when a U.S. transferor contributes property to a partnership with a partner that is a related foreign person and persons related to the U.S. transferor own more than 80 percent of the interests in the partnership. Accordingly, the Treasury Department and the IRS expect that these regulations primarily will affect large domestic corporations. 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 business.

### II. Paperwork Reduction Act

The collection of information imposed by these regulations is contained in §§1.721(c)-6 and 1.6038B-2. The collection of information provided by these regulations has been reviewed and approved by the Office of Management and Budget under control numbers 1545-1668 and 1545-0123. The information is required to comply with the gain deferral method, which generally allows a U.S. transferor to avoid immediate gain recognition upon a contribution of section 721(c) property to a section 721(c) partnership. The likely respondents are domestic corporations. Estimates for completing these forms can be located in the instructions to Forms 8865, 8838-P, and 1065.

Upon a contribution of section 721(c) property to a section 721(c) partnership, a U.S. transferor must comply with the gain deferral method described in §1.721(c)-3 to avoid immediate gain recognition. To comply with the gain deferral method, §1.721(c)-3(b)(3) provides that the procedural and reporting requirements of §1.721(c)-6 must be met; additionally, §1.721(c)-3(b)(4) provides that a U.S. transferor must consent to an extension of the period of limitations on assessment of tax as required by §1.721(c)-6(b)(5).

Section 1.721(c)-6(b) describes the procedural and reporting requirements of a U.S. transferor. The collection of information described in §§1.721(c)-6(b)(2) and (c)(2) and 1.6038B-2(a)(1)(iii) regarding a gain deferral contribution is provided by the U.S. transferor to the IRS on any ap-

plicable Schedules to Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, and is mandatory; the relevant Schedules include, as applicable, Schedule A-1, *Certain Foreign Partners*; Schedule A-2, *Foreign Partners of Section 721(c) Partnership*; Schedule G, *Statement of Application of the Gain Deferral Method Under Section 721(c)*; Schedule H, *Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c)*; and Schedule O, *Transfer of Property to a Foreign Partnership*. The information will be used by the U.S. transferor to comply with the gain deferral method.

The collection of information described in §§1.721(c)-6(b)(3) and 1.6038B-2(a)(1)(iii) is provided on Schedules G, H, and O of Form 8865 and is mandatory. The information will be used by the U.S. transferor to annually report information for each gain deferral contribution.

The collection of information described in §1.721(c)-6(b)(3)(iii), if not already provided elsewhere, is provided on Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, and is mandatory. The information will be used by the U.S. transferor to comply with the gain deferral method.

The collection of information described in §1.721(c)-6(b)(5) is provided by the U.S. transferor to the IRS on Form 8838-P, *Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c))*, and is mandatory. The information will be used by the U.S. transferor to extend the period of limitations on the assessment of tax to ensure that the gain deferral method is properly applied.

If a section 721(c) partnership does not have a filing obligation under section 6031, the collection of information described in §1.721(c)-6(c)(3) is provided by a section 721(c) partnership to a U.S. transferor on Schedule K-1 (Form 8865), *Partner's Share of Income, Deduction, Credits, etc.*, for all related foreign persons that are direct or indirect partners in the section 721(c) partnership. The information will be used by the U.S. transferor to annually report information for each gain deferral contribution.

If a section 721(c) partnership has a filing obligation under section 6031, the

collection of information described in §1.721(c)-6(d)(2) is provided by the section 721(c) partnership to the U.S. trans-

feror on Schedule K-1 (Form 1065). The information will be used by the U.S. transferor to comply with the requirements

of the gain deferral method provided in §1.721(c)-6(b)(2) and (3).

### Revision of Existing Forms

	New	Revision of existing form	Number of additional respondents (estimated, rounded to nearest 100)
Form 8865		Y	<200
Form 8838-P		Y	<200
Form 1065		Y	<200

Source: RAAS:CDW and SOI

The numbers of respondents in the Revision of Existing Forms table were estimated by the Research, Applied Analytics and Statistics Division of the IRS from the Compliance Data Warehouse and Statistics of Income, using tax year 2017. Data for each of the Forms 8865, 8838-P, and 1065 represent preliminary estimates of the total number of additional taxpayers that are expected to file these forms. The tax data for 2018 is not yet available.

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately \$154 million. These regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes

substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

### Drafting Information

The principal authors of these regulations are Chadwick Rowland and Ronald M. Gootzeit, Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

### Statement of Availability

Notice 2015-54 (cited in this preamble) is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

### Effect on Other Documents

The following section of the following publication is obsolete as of January 17, 2020:

Section 4 of Notice 2015-54 (2015-34 I.R.B. 210).

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the sectional authority citations for §§1.197-2T, 1.704-3T, 1.721(c)-1T through 1.721(c)-7T, and 1.6038B-2T and adding entries in numerical order for §§1.721(c)-1 through 1.721(c)-7 to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

\* \* \* \* \*

Section 1.721(c)-1 also issued under 26 U.S.C. 721(c).

Section 1.721(c)-2 also issued under 26 U.S.C. 721(c).

Section 1.721(c)-3 also issued under 26 U.S.C. 721(c).

Section 1.721(c)-4 also issued under 26 U.S.C. 721(c).

Section 1.721(c)-5 also issued under 26 U.S.C. 721(c).

Section 1.721(c)-6 also issued under 26 U.S.C. 721(c).



Section 1.721(c)-7 also issued under 26 U.S.C. 721(c).

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Par. 2. Section 1.197-2 is amended by revising paragraphs (h)(12)(vii)(C) and (l) (5) to read as follows:

*§1.197-2 Amortization of goodwill and certain other intangibles.*

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(h) \*\*\*

(12) \*\*\*

(vii) \*\*\*

(C) *Rules for section 721(c) partnerships.* See §1.704-3(d)(5)(iii) if there is a contribution of a section 197(f)(9) intangible to a section 721(c) partnership (as defined in §1.721(c)-1(b)(14)).

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(l) \*\*\*

(5) *Applicability dates for section 721(c) partnerships—(i) In general.* Except as provided in paragraph (l)(5)(ii) of this section, paragraph (h)(12)(vii)(C) of this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(ii) *Application of the provisions described in paragraph (l)(5)(i)(A) of this section retroactively.* Paragraph (h)(12)(vii)(C) of this section may be applied with respect to a contribution occurring on or after August 6, 2015, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. A taxpayer applying paragraph (h)(12)(vii)(C) of this section retroactively must apply paragraph (h)(12)(vii)(C) of this section on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

*§1.197-2T [Removed]*

Par. 3. Section 1.197-2T is removed.

Par. 4. Section 1.704-1 is amended by revising paragraphs (b)(2)(iv)(f)(6) and (f) to read as follows:

*§1.704-1 Partner's distributive share.*

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(b) \*\*\*

(2) \*\*\*

(iv) \*\*\*

(f) \*\*\*

(6) Notwithstanding paragraph (b)(2)(iv)(f)(5) of this section, the revaluation is required under §1.721(c)-3(d)(1) as a condition of the application of the gain deferral method (as described in §1.721(c)-3(b)) and is pursuant to an event described in this paragraph (b)(2)(iv)(f)(6). If an interest in a partnership is contributed to a section 721(c) partnership (as defined in §1.721(c)-1(b)(14)), the partnership whose interest is contributed may revalue its property in accordance with this section. In this case, the revaluation by the partnership whose interest was contributed must occur immediately before the contribution. If a partnership that revalues its property pursuant to this paragraph owns an interest in another partnership, the partnership in which it owns an interest may also revalue its property in accordance with this section. When multiple partnerships revalue under this paragraph (b)(2)(iv)(f)(6), the revaluations occur in order from the lowest-tier partnership to the highest-tier partnership.

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(f) *Applicability dates—(1) In general.* Except as provided in paragraph (f)(2) of this section, paragraph (b)(2)(iv)(f)(6) of this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply the provisions described in paragraph (f)(1) of this section retroactively.* Paragraph (b)(2)(iv)(f)(6) of this section may, by election, be applied with respect to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying paragraph (b)(2)(iv)(f)(6) of this section on a timely filed

original return (including extensions) or an amended return filed no later than July 18, 2017.

*§1.704-1T [Amended]*

Par. 5. Paragraphs (b)(2)(iv)(f)(6) and (f) of §1.704-1T are removed.

Par. 6. Section 1.704-3 is amended by revising paragraphs (a)(13), (d)(5)(iii), and (g) to read as follows:

*§1.704-3 Contributed property.*

(a) \*\*\*

(13) *Rules for tiered section 721(c) partnerships—(i) Revaluations.* If a partnership revalues its property pursuant to §1.704-1(b)(2)(iv)(f)(6) immediately before an interest in the partnership is contributed to another partnership, or if an upper-tier partnership owns an interest in a lower-tier partnership, and both the upper-tier partnership and the lower-tier partnership revalue partnership property pursuant to §1.704-1(b)(2)(iv)(f)(6), the principles of paragraph (a)(9) of this section will apply to any reverse section 704(c) allocations made as a result of the revaluation.

(ii) *Basis-derivative items.* If a lower-tier partnership that is a section 721(c) partnership applies the gain deferral method, then, for purposes of applying this section, the upper-tier partnership must treat its distributive share of lower-tier partnership items of gain, loss, amortization, depreciation, or other cost recovery with respect to the lower-tier partnership's section 721(c) property as though they were items of gain, loss, amortization, depreciation, or other cost recovery with respect to the upper-tier partnership's interest in the lower-tier partnership. For purposes of this paragraph (a)(13)(ii), gain deferral method is defined in §1.721(c)-1(b)(8), section 721(c) partnership is defined in §1.721(c)-1(b)(14), and section 721(c) property is defined in §1.721(c)-1(b)(15).

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(d) \*\*\*

(5) \*\*\*

(iii) *Special rules for a section 721(c) partnership and anti-churning property—(A) In general.* Solely in the case of a gain deferral contribution of section 721(c) property that is a section 197(f)(9) intangible that was not an amortizable section 197 intangible in the hands of the contributor, the remedial allocation method is modified with respect to allocations



to a related person to the U.S. transferor pursuant to paragraphs (d)(5)(iii)(B) through (F) of this section. For purposes of this paragraph (d)(5)(iii), gain deferral contribution is defined in §1.721(c)-1(b)(7), related person is defined in §1.721(c)-1(b)(12), section 721(c) partnership is defined in §1.721(c)-1(b)(14), section 721(c) property is defined in §1.721(c)-1(b)(15), and U.S. transferor is defined in §1.721(c)-1(b)(18). For an example applying the rules of this paragraph (d)(5)(iii), see §1.721(c)-7(b)(6) (*Example 6*).

(B) *Book basis recovery.* The section 721(c) partnership must amortize the portion of the partnership's book value in the section 197(f)(9) intangible that exceeds the adjusted basis in the property upon contribution using any recovery period and amortization method available to the partnership as if the property had been newly purchased by the partnership from an unrelated party.

(C) *Effect of ceiling rule limitations.* If the ceiling rule causes the book allocation of the item of amortization of a section 197(f)(9) intangible under paragraph (d)(5)(iii)(B) of this section by a section 721(c) partnership to a related person with respect to the U.S. transferor to differ from the tax allocation of the same item to the related person (a ceiling rule limited related person), the partnership must not create a remedial item of deduction to allocate to the related person but instead must increase the adjusted basis of the section 197(f)(9) intangible by an amount equal to the difference solely with respect to that related person. The partnership simultaneously must create an offsetting remedial item in an amount identical to the increase in adjusted tax basis of the section 197(f)(9) intangible and allocate it to the contributing partner.

(D) *Effect of basis adjustment—(1) In general.* The basis adjustment described in paragraph (d)(5)(iii)(C) of this section constitutes an adjustment to the adjusted basis of a section 197(f)(9) intangible with respect to the ceiling rule limited related person only. No adjustment is made to the common basis of partnership property. Thus, for purposes of calculating gain and loss, the ceiling rule limited related person will have a special basis for that section 197(f)(9) intangible. The adjustment to the basis of partnership property under

this section has no effect on the partnership's computation of any item under section 703.

(2) *Computation of a partner's distributive share of partnership items.* The partnership first computes its items of gain or loss at the partnership level under section 703. The partnership then allocates the partnership items among the partners, including the ceiling rule limited related person, in accordance with section 704, and adjusts the partners' capital accounts accordingly. The partnership then adjusts the ceiling rule limited related person's distributive share of the items of partnership gain or loss, in accordance with paragraph (d)(5)(iii)(D)(3) of this section, to reflect the effects of that person's basis adjustment under this section. These adjustments to that person's distributive shares must be reflected on Schedules K and K-1 of the partnership's return (Form 1065) (when otherwise required to be completed) and do not affect that person's capital account.

(3) *Effect of basis adjustment in determining items of income, gain, or loss.* The amount of a ceiling rule limited related person's gain or loss from the sale or exchange of a section 197(f)(9) intangible in which that person has a tax basis adjustment is equal to that person's share of the partnership's gain or loss from the sale of the asset (including any remedial allocations under this paragraph (d)), minus the amount of that person's tax basis adjustment for the section 197(f)(9) intangible.

(E) *Subsequent transfers—(1) In general.* Except as provided in paragraph (d)(5)(iii)(E)(2) of this section, if a ceiling rule limited related person transfers all or part of its partnership interest, the portion of the basis adjustment for a section 197(f)(9) intangible attributable to the interest transferred is eliminated. The transferor of the partnership interest remains the ceiling rule limited related person with respect to any remaining basis adjustment for the section 197(f)(9) intangible.

(2) *Special rules for substituted basis transactions.* Paragraph (d)(5)(iii)(E)(1) of this section does not apply to the extent a ceiling rule limited related person transfers its partnership interest in a transaction in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the ceiling rule

limited related person's basis in that interest. Instead, in such a case, the transferee succeeds to that portion of the transferor's basis adjustment for a section 197(f)(9) intangible attributable to the interest transferred. In such a case, the basis adjustment in a section 197(f)(9) intangible to which the transferee succeeds is taken into account for purposes of determining the transferee's share of the adjusted basis to the partnership of the partnership's property for purposes of §§1.743-1(b) and 1.755-1(b)(5). To the extent a transferee would be required to decrease the adjusted basis of a section 197(f)(9) intangible pursuant to §§1.743-1(b)(2) and 1.755-1(b)(5), the decrease first reduces the special basis adjustment described in paragraph (d)(5)(iii)(C) of this section, if any, to which the transferee succeeds.

(F) *Non-amortization of basis adjustment.* Neither the increase to the adjusted basis of a section 197(f)(9) intangible with respect to a ceiling rule limited related person nor the portion of the basis of any property that was determined by reference to such increase is subject to amortization, depreciation, or other cost recovery.

\* \* \* \* \*

(g) *Applicability dates for rules for section 721(c) partnerships—(1) In general.* Notwithstanding paragraph (f) of this section, except as provided in paragraph (g)(2) of this section, paragraphs (a)(13) and (d)(5)(iii) of this section apply with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply the provisions described in paragraph (g)(1) of this section retroactively.* Paragraphs (a)(13) and (d)(5)(iii) of this section may, by election, be applied with respect to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying paragraph (a)(13)

or (d)(5)(iii) of this section, as applicable, on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

*§1.704-3T [Removed]*

Par. 7. Section 1.704-3T is removed.

Par. 8. Section 1.721(c)-1 is added to read as follows:

*§1.721(c)-1 Overview, definitions, and rules of general application.*

(a) *Overview*—(1) *In general.* This section and §§1.721(c)-2 through 1.721(c)-7 (collectively, the *section 721(c) regulations*) provide rules under section 721(c). This section provides definitions and rules of general application for purposes of the section 721(c) regulations. Section 1.721(c)-2 provides the general operative rules that override section 721(a) nonrecognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Section 1.721(c)-3 describes the gain deferral method, which may be applied in order to avoid the immediate recognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Section 1.721(c)-4 provides rules regarding acceleration events for purposes of applying the gain deferral method. Section 1.721(c)-5 identifies exceptions to the rules regarding acceleration events provided in §1.721(c)-4(b). Section 1.721(c)-6 provides procedural and reporting requirements. Section 1.721(c)-7 provides examples illustrating the application of the section 721(c) regulations.

(2) *Scope.* Paragraph (b) of this section provides definitions. Paragraph (c) of this section describes the treatment of a change in form of a partnership. Paragraph (d) of this section provides an anti-abuse rule. Paragraph (e) of this section provides the dates of applicability.

(b) *Definitions.* The following definitions apply for purposes of the section 721(c) regulations. Unless otherwise indicated, the definitions apply on a property-by-property basis, as applicable.

(1) *Acceleration event.* An acceleration event has the meaning provided in §1.721(c)-4(b).

(2) *Built-in gain.* Built-in gain is, with respect to property contributed to a partnership, the excess of the book value of the property over the partnership's adjust-

ed tax basis in the property upon the contribution, determined without regard to the application of §1.721(c)-2(b).

(3) *Consistent allocation method.* The consistent allocation method is the method described in §1.721(c)-3(c).

(4) *Controlled partnership.* A partnership is a controlled partnership with respect to a U.S. transferor if the U.S. transferor and related persons control the partnership. For purposes of this paragraph (b)(4), control is determined based on all the facts and circumstances, except that a partnership will be deemed to be controlled by a U.S. transferor and related persons if those persons, in the aggregate, own (directly or indirectly through one or more partnerships) more than 50 percent of the interests in the partnership capital or profits.

(5) *Direct or indirect partner.* A direct or indirect partner is a person (other than a partnership) that owns an interest in a partnership directly or indirectly through one or more partnerships.

(6) *Excluded property.* Excluded property is—

(i) A cash equivalent;

(ii) A security within the meaning of section 475(c)(2), without regard to section 475(c)(4);

(iii) Tangible property with a book value exceeding adjusted tax basis by no more than \$20,000 or with an adjusted tax basis in excess of book value; and

(iv) An interest in a partnership in which 90 percent or more of the property (as measured by value) held by the partnership (directly or indirectly through interests in one or more partnerships that are not excluded property) consists of property described in paragraphs (b)(6)(i) through (iii) of this section.

(7) *Gain deferral contribution.* A gain deferral contribution is a contribution of section 721(c) property to a section 721(c) partnership with respect to which the recognition of gain is deferred under the gain deferral method.

(8) *Gain deferral method.* The gain deferral method is the method described in §1.721(c)-3(b).

(9) *Partial acceleration event.* A partial acceleration event is an event described in §1.721(c)-5(d)(2) or (3).

(10) *Regulatory allocation.* A regulatory allocation is—

(i) An allocation pursuant to a minimum gain chargeback, as defined in §1.704-2(b)(2);

(ii) A partner nonrecourse deduction, as determined in §1.704-2(i)(2);

(iii) An allocation pursuant to a partner minimum gain chargeback, as described in §1.704-2(i)(4);

(iv) An allocation pursuant to a qualified income offset, as defined in §1.704-1(b)(2)(ii)(d);

(v) An allocation with respect to the exercise of a noncompensatory option described in §1.704-1(b)(2)(iv)(s); and

(vi) An allocation of partnership level ordinary income or loss described in §1.751-1(b)(3).

(11) *Related foreign person.* A related foreign person is, with respect to a U.S. transferor, a related person (other than a partnership) that is not a U.S. person.

(12) *Related person*—(i) *In general.* A related person is, with respect to a U.S. transferor, a person that is related (within the meaning of section 267(b) or 707(b)(1)) to the U.S. transferor.

(ii) *Modification to the application of section 267(b).* For purposes of determining if a person is a related person with respect to a U.S. transferor, section 267(b) is applied without regard to section 267(c)(3).

(13) *Remaining built-in gain*—(i) *In general.* Remaining built-in gain is, with respect to section 721(c) property subject to the gain deferral method, the built-in gain reduced by decreases in the difference between the property's book value and adjusted tax basis, but, for purposes of this paragraph (b)(13)(i), without taking into account increases or decreases to the property's book value pursuant to §1.704-1(b)(2)(iv)(f) or (s).

(ii) *Special rule for tiered partnerships.* If section 721(c) property is described in §1.721(c)-3(d)(1)(ii), the remaining built-in gain includes the new positive reverse section 704(c) layer described in §1.721(c)-3(d)(1)(ii), reduced by decreases in the difference between the property's book value and adjusted tax basis, but, for purposes of this paragraph (b)(13)(ii), without taking into account increases or decreases to the property's book value pursuant to §1.704-1(b)(2)(iv)(f) or (s) that are unrelated to the revaluation described in §1.721(c)-3(d)(1)(i).

(14) *Section 721(c) partnership*—(i) *In general.* A partnership (domestic or foreign) is a section 721(c) partnership if there is a contribution of section 721(c) property to the partnership and, after the contribution and all transactions related to the contribution—

(A) A related foreign person with respect to the U.S. transferor is a direct or indirect partner in the partnership; and

(B) The U.S. transferor and related persons own 80 percent or more of the interests in partnership capital, profits, deductions, or losses.

(ii) *Special rule for tiered partnerships.* A partnership described in §1.721(c)-3(d)(1) or (2) is deemed to be a section 721(c) partnership for purposes of the gain deferral method.

(15) *Section 721(c) property*—(i) *In general.* Section 721(c) property is property, other than excluded property, with built-in gain that is contributed to a partnership by a U.S. transferor, including pursuant to a contribution described in §1.721(c)-2(d) (partnership look-through rule). If the U.S. transferor is treated as contributing its share of property to a partnership pursuant to §1.721(c)-2(d), the entire property will be section 721(c) property.

(ii) *Special rule for tiered partnerships.* Property described in §1.721(c)-3(d)(1)(ii) and an interest in a partnership described in §1.721(c)-3(d)(2)(ii) is deemed to be section 721(c) property.

(16) *Successor event.* A successor event is an event described in §1.721(c)-5(c)(2), (3), (4), or (5).

(17) *Termination event.* A termination event is an event described in §1.721(c)-5(b)(2), (3), (4), (5), (6), or (7).

(18) *U.S. transferor*—(i) *In general.* A U.S. transferor is a United States person within the meaning of section 7701(a)(30) (a *U.S. person*), other than a domestic partnership.

(ii) *Special rule for tiered partnerships.* Solely for purposes of applying the consistent allocation method, a U.S. transferor includes a partnership that is treated as a U.S. transferor under §1.721(c)-3(d)(1)(iii) or (d)(2)(i).

(c) *Change in form of a partnership.* A mere change in identity, form, or place of organization of a partnership or a recapitalization of a partnership will not cause

the partnership to become a section 721(c) partnership.

(d) *Anti-abuse rule.* If a U.S. transferor engages in a transaction (or series of transactions) or an arrangement with a principal purpose of avoiding the application of the section 721(c) regulations, the transaction (or series of transactions) or the arrangement may be recharacterized (including by aggregating or disregarding steps or disregarding an intermediate entity) in accordance with its substance.

(e) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (e)(2) and (3) of this section, this section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

(2) *Certain provisions.* Except as provided in paragraph (e)(3) of this section, paragraphs (b)(6)(iv) and (c) of this section apply to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017. Except as provided in paragraph (e)(3) of this section, paragraph (b)(14)(i)(B) of this section applies by replacing “80 percent or more” with “greater than 50 percent” with respect to contributions that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to contributions that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015, but was filed on or after August 6, 2015 but before January 18, 2017. Except as provided in paragraph (e)(3) of this section, paragraph (b)(12)(ii) of this section applies to contributions occurring on or after January 17, 2020.

(3) *Election to apply the provisions described in paragraph (e)(2) of this section retroactively.* Paragraphs (b)(6)(iv) and (c) of this section and paragraph (b)(14)(i)(B) of this section, without the modification described in paragraph (e)(2) of this section, may, by election, be applied

to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must have been made by applying paragraph (b)(6)(iv) or (c) as described in paragraph (e)(2) of this section or paragraph (b)(14)(i)(B) of this section, without the modification described in paragraph (e)(2) of this section, as applicable, to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017. Paragraph (b)(12)(ii) of this section, may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 17, 2020, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must be made by applying paragraph (b)(12)(ii) of this section to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 17, 2020.

#### *§1.721(c)-1T [Removed]*

Par. 9. Section 1.721(c)-1T is removed.

Par. 10. Section 1.721(c)-2 is added to read as follows:

#### *§1.721(c)-2 Recognition of gain on certain contributions of property to partnerships with related foreign partners.*

(a) *Scope.* This section provides the general operative rules that override section 721(a) nonrecognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Paragraph (b) of this section provides the general rule that nonrecognition of gain under section 721(a) does not apply to a contribution of section 721(c) property to a section 721(c) partnership. Paragraph (c) of this section provides a de minimis exception to the application of the general rule in paragraph (b) of this section. Paragraph (d) of this section provides rules for identifying a section 721(c) partnership when a partnership in which a U.S. transferor is a direct



or indirect partner contributes property to another partnership. Paragraph (e) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see §1.721(c)-1(b).

(b) *General rule for contributions of section 721(c) property.* Except as provided in this paragraph (b), paragraph (c) of this section, and §1.721(c)-3 (describing the gain deferral method), nonrecognition under section 721(a) will not apply to gain realized by the contributing partner upon a contribution of section 721(c) property to a section 721(c) partnership. This paragraph (b) does not apply to a direct contribution by a U.S. transferor if the U.S. transferor and related persons with respect to the U.S. transferor do not own 80 percent or more of the interests in partnership capital, profits, deductions, or losses.

(c) *De minimis exception.* Paragraph (b) of this section will not apply with respect to contributions to a section 721(c) partnership during a taxable year of the section 721(c) partnership for which the sum of the built-in gain with respect to all section 721(c) property contributed in that taxable year does not exceed \$1 million. If, pursuant to the last sentence of paragraph (b) of this section, a direct contribution of property to the section 721(c) partnership by a U.S. transferor is not subject to paragraph (b) of this section, then such contribution is not taken into account for purposes of this paragraph (c).

(d) *Rules for identifying a section 721(c) partnership when a partnership contributes property to another partnership—(1) Partnership look-through rule.* If a U.S. transferor is a direct or indirect partner in a partnership (upper-tier partnership) and the upper-tier partnership contributes all or a portion of its property to another partnership (lower-tier partnership), then, for purposes of determining if the lower-tier partnership is a section 721(c) partnership, the U.S. transferor is treated as contributing to the lower-tier partnership its share of the property actually contributed by the upper-tier partnership to the lower-tier partnership.

(2) *Exception for a technical termination of a partnership.* Paragraph (d)(1) of this section will not apply to a deemed contribution that occurs as a result of a termination of a partnership described in section 708(b)(1)(B) (technical termination).

If a partnership is a section 721(c) partnership immediately before a technical termination, see §1.721(c)-5(c)(4) (which treats technical terminations as successor events in certain circumstances).

(e) *Applicability dates—(1) In general.* Except as provided in paragraphs (e) (2) and (3) of this section, this section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

(2) *Certain provisions.* Except as provided in paragraph (e)(3) of this section, the final sentence of paragraph (b) of this section, the final sentence of paragraph (c) of this section, and paragraph (d)(2) of this section apply to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(3) *Election to apply the provisions described in paragraph (e)(2) of this section retroactively.* The final sentence of paragraph (b) of this section, the final sentence of paragraph (c) of this section, and paragraph (d)(2) of this section may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying the final sentence of paragraph (b) of this section, the final sentence of paragraph (c) of this section, or paragraph (d)(2) of this section, as applicable, to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

§1.721(c)-2T [Removed]

Par. 11. Section 1.721(c)-2T is removed.

Par. 12. Section 1.721(c)-3 is added to read as follows:

§1.721(c)-3 *Gain deferral method.*

(a) *Scope.* This section describes the gain deferral method to avoid the immediate recognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Paragraph (b) of this section provides the requirements of the gain deferral method, including the requirement to apply the consistent allocation method. Paragraph (c) of this section describes the consistent allocation method. Paragraph (d) of this section provides rules for tiered partnerships. Paragraph (e) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see §1.721(c)-1(b).

(b) *Requirements of the gain deferral method.* A contribution of section 721(c) property to a section 721(c) partnership that would be subject to §1.721(c)-2(b) will not be subject to §1.721(c)-2(b) if the conditions in paragraphs (b)(1) through (5) of this section are satisfied with respect to that property.

(1) Either—

(i) Both—

(A) The section 721(c) partnership adopts the remedial allocation method described in §1.704-3(d) with respect to the section 721(c) property; and

(B) The section 721(c) partnership applies the consistent allocation method provided in paragraph (c) of this section; or

(ii) For the period beginning on the date of the contribution of the section 721(c) property and ending on the date on which there is no remaining built-in gain with respect to that property, all distributive shares of income and gain with respect to the section 721(c) property for all direct and indirect partners that are related foreign persons with respect to the U.S. transferor will be subject to taxation as income effectively connected with a trade or business within the United States (under either section 871 or 882), and neither the section 721(c) partnership nor a related foreign person that is a direct or indirect partner in the section 721(c) partnership claims benefits under an income tax convention that would exempt the income or gain from tax or reduce the rate of taxation to which the income or gain is subject.

(2) Upon an acceleration event, the U.S. transferor recognizes an amount of gain equal to the remaining built-in gain with respect to the section 721(c) property or an amount of gain required to be



recognized under §1.721(c)-5(d) or (e), as applicable.

(3) The procedural and reporting requirements provided in §1.721(c)-6(b) are satisfied.

(4) The U.S. transferor consents to extend the period of limitations on assessment of tax as required by §1.721(c)-6(b) (5).

(5) If the section 721(c) property is a partnership interest or property described in the partnership look-through rule provided in §1.721(c)-2(d), the applicable tiered-partnership rules provided in paragraph (d) of this section are applied.

(c) *Consistent allocation method*—(1) *In general.* For each taxable year of a section 721(c) partnership in which there is remaining built-in gain in the section 721(c) property, the section 721(c) partnership must allocate each book item of income, gain, deduction, and loss with respect to the section 721(c) property to the U.S. transferor in the same percentage. For purposes of this paragraph (c)(1), upon a variation (as defined in §1.706-4(a)(1)) of a U.S. transferor's interest in a section 721(c) partnership, a book item of income, gain, deduction, and loss with respect to a section 721(c) property is treated as allocated in the same percentage if the item is allocated under the interim closing method (as described in §1.706-4), unless the variation results from a transaction undertaken with a principal purpose of avoiding the tax consequences of the gain deferral method. For exceptions to the first sentence in this paragraph (c)(1), see paragraph (c)(4) of this section.

(2) *Determining income or gain with respect to section 721(c) property.* For purposes of applying paragraph (c)(1) of this section, a section 721(c) partnership must attribute book income and gain to each item of section 721(c) property in a consistent manner using any reasonable method taking into account all the facts and circumstances. All items of book income and gain attributable to an item of section 721(c) property will comprise a single class of gross income for purposes of applying paragraph (c)(3) of this section.

(3) *Determining deduction or loss with respect to section 721(c) property.* For purposes of applying paragraph (c)(1) of this section, a section 721(c) partner-

ship must use the principles of §§1.861-8 and 1.861-8T to allocate and apportion its items of deduction, except for interest expense and research and experimental expenditures, and loss to the class of gross income with respect to each item of section 721(c) property as determined in paragraph (c)(2) of this section. Accordingly, a deduction or loss will be considered to be definitely related and therefore allocable to a class of gross income with respect to particular section 721(c) property whether or not there is any item of gross income in that class that is received or accrued during the taxable year and whether or not the amount of deduction or loss exceeds the amount of gross income in that class during the taxable year. If a deduction or loss is definitely related and therefore allocable to gross income attributable to more than one class of gross income of the section 721(c) partnership or if a deduction or loss is not definitely related to any class of gross income of the section 721(c) partnership, the section 721(c) partnership must apportion that deduction or loss among its classes of gross income using a reasonable method that reflects to a reasonably close extent the factual relationship between the deduction or loss and the classes of gross income. The section 721(c) partnership may allocate and apportion its interest expense and research and experimental expenditures under any reasonable method, including, but not limited to, the methods prescribed in §§1.861-9 and 1.861-9T (interest expense) and §1.861-17 (research and experimental expenditures). For purposes of this paragraph (c)(3), the section 721(c) partnership must allocate and apportion its deductions and losses without regard to the partners' percentage interests in the partnership.

(4) *Exceptions to the consistent allocation method*—(i) *Regulatory allocations.* A regulatory allocation (as defined in §1.721(c)-1(b)(10)) of book income, gain, deduction, or loss with respect to section 721(c) property that otherwise would fail to satisfy paragraph (c)(1) of this section is nevertheless deemed to satisfy paragraph (c)(1) of this section if the allocation is—

(A) An allocation of income or gain to the U.S. transferor (or a member of its consolidated group as defined in §1.1502-1(h));

(B) An allocation of deduction or loss to a partner other than the U.S. transferor (or a member of its consolidated group); or

(C) Treated as a partial acceleration event pursuant to §1.721(c)-5(d)(2).

(ii) *Allocation of creditable foreign tax expenditures.* An allocation of a creditable foreign tax expenditure (as defined in §1.704-1(b)(4)(viii)(b)) is not subject to the consistent allocation method.

(d) *Tiered partnership rules.* This paragraph (d) provides the tiered partnership rules referred to in paragraph (b)(5) of this section.

(1) *Section 721(c) property is a partnership interest.* If the section 721(c) property that is contributed to a section 721(c) partnership is an interest in a partnership (lower-tier partnership), then the lower-tier partnership, if it is a controlled partnership with respect to the U.S. transferor, and each partnership in which an interest is owned (directly or indirectly through one or more partnerships) by the lower-tier partnership and that is a controlled partnership with respect to the U.S. transferor, must satisfy the requirements of paragraphs (d)(1)(i), (ii), and (iii) of this section.

(i) The partnership must revalue all its property under §1.704-1(b)(2)(iv)(f)(6) if the revaluation would result in a separate positive difference between book value and adjusted tax basis in at least one property that is not excluded property.

(ii) The partnership must apply the gain deferral method for each property (other than excluded property) for which there is a separate positive difference between book value and adjusted tax basis resulting from the revaluation described in paragraph (d)(1) of this section (*new positive reverse section 704(c) layer*). If the partnership has previously adopted a section 704(c) method other than the remedial allocation method for the property, the partnership satisfies the requirement of paragraph (b)(1)(i)(A) of this section by adopting the remedial allocation method for the new positive reverse section 704(c) layer.

(iii) The partnership must treat a partner that is a partnership in which the U.S. transferor is a direct or indirect partner as if it were the U.S. transferor with respect to the section 721(c) property solely for

purposes of applying the consistent allocation method.

(2) *Section 721(c) property is indirectly contributed by a U.S. transferor under the partnership look-through rule.* If the U.S. transferor is a direct or indirect partner in the upper-tier partnership described in §1.721(c)-2(d)(1), and under §1.721(c)-2(d)(1), the U.S. transferor is treated as contributing the section 721(c) property (including an interest in a partnership described in paragraph (d)(1) of this section) to a section 721(c) partnership, then the requirements of paragraphs (d)(2)(i), (ii), and (iii) of this section must be satisfied.

(i) The section 721(c) partnership must treat the upper-tier partnership as the U.S. transferor of the section 721(c) property solely for purposes of applying the consistent allocation method;

(ii) The upper-tier partnership, if it is a controlled partnership with respect to the U.S. transferor, must apply the gain deferral method to its interest in the section 721(c) partnership; and

(iii) If the U.S. transferor is an indirect partner in the upper-tier partnership through one or more partnerships, the principles of paragraphs (d)(2)(i) and (ii) of this section must be applied with respect to those partnerships that are controlled partnerships with respect to the U.S. transferor.

(e) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (e) (2) and (3) of this section, this section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

(2) *Certain provisions.* Except as provided in paragraph (e)(3) of this section, paragraphs (b)(1)(ii), (c)(2) and (3), (c) (4)(i) and (ii), and (d)(1) and (2) of this section apply to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017. Except as provided in paragraph (e)(3) of this section, the second sentence of paragraph (c)(1) of this

section applies to contributions occurring on or after January 17, 2020.

(3) *Election to apply the provisions described in paragraph (e)(2) of this section retroactively.* Paragraphs (b)(1)(ii), (c) (2) and (3), (c)(4)(i) and (ii), and (d)(1) and (2) of this section may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must have been made by applying paragraph (b)(1)(ii), (c)(2) or (3), (c)(4)(i) or (ii), or (d)(1) or (2) of this section, as applicable, to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017. In order to elect to apply paragraph (c)(2) or (3) of this section to a contribution described in this paragraph (e)(3), an election must also have been made to apply paragraph (c)(3) or (2) of this section, respectively, to the contribution. The second sentence of paragraph (c)(1) of this section, may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 17, 2020, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must be made by applying the second sentence of paragraph (c)(1) of this section to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 17, 2020.

(4) *Transitional rules.* If a contribution is described in paragraph (e)(2) of this section and no election described in paragraph (e)(3) of this section is made to apply one or more of paragraphs (c)(2) and (3) and (c)(4)(i) and (ii) of this section, as applicable, to the contribution, then, for purposes of paragraph (c)(1) of this section, the section 721(c) partnership must attribute book income, gain, loss, and deduction to the section 721(c) property in a consistent manner under any

reasonable method taking into account all the facts and circumstances. If a contribution is described in paragraph (e)(2) of this section and no election described in paragraph (e)(3) of this section is made to apply paragraph (d)(1) or (2) of this section, as applicable, to the contribution, then, this section must be applied in a manner consistent with the purpose of the section 721(c) regulations. Thus, for example, if a U.S. transferor is a direct or indirect partner in a partnership and that partnership contributes section 721(c) property to a lower-tier partnership, or, if a U.S. transferor contributes an interest in a partnership that owns section 721(c) property to a lower-tier partnership, then paragraph (b) of this section applies as though the U.S. transferor contributed its share of the section 721(c) property directly.

*§1.721(c)-3T [Removed]*

Par. 13. Section 1.721(c)-3T is removed.

Par. 14. Section 1.721(c)-4 is added to read as follows:

*§1.721(c)-4 Acceleration events.*

(a) *Scope.* This section provides rules regarding acceleration events for purposes of applying the gain deferral method. Paragraph (b) of this section defines an acceleration event. Paragraph (c) of this section provides the consequences of an acceleration event. Paragraph (d) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see §1.721(c)-1(b).

(b) *Definition of an acceleration event*—(1) *General rules.* Except as provided in this paragraph (b) and §1.721(c)-5 (acceleration event exceptions), an acceleration event with respect to section 721(c) property is any event that either would reduce the amount of remaining built-in gain that a U.S. transferor would recognize under the gain deferral method if the event had not occurred or could defer the recognition of the remaining built-in gain. An acceleration event includes a contribution of section 721(c) property to another partnership by a section 721(c) partnership and a contribution of an interest in a section 721(c) partnership to another partnership. This paragraph (b) applies on a property-by-property basis.

(2) *Failure to comply with a requirement of the gain deferral method*—(i) *General rule.* An acceleration event with

respect to section 721(c) property occurs when any party fails to comply with a condition of the gain deferral method with respect to the section 721(c) property.

(ii) *Certain failures to comply with procedural and reporting requirements.* Notwithstanding paragraph (b)(2)(i) of this section, an acceleration event will not occur solely as a result of a failure to comply with a requirement of §1.721(c)-3(b)(3) that is not willful. See §§1.721(c)-6(f) and 1.6038B-2(h)(3).

(3) *Lower-tier partnership allocations.* Notwithstanding paragraph (b)(1) of this section, an acceleration event will not occur because of a reduction in remaining built-in gain in an interest in a partnership that is section 721(c) property that occurs as a result of allocations of book items of deduction and loss, or tax items of income and gain.

(4) *Deemed acceleration event.* A U.S. transferor may treat an acceleration event as having occurred with respect to section 721(c) property by both recognizing gain in an amount equal to the remaining built-in gain that would have been allocated to the U.S. transferor if the section 721(c) partnership had sold the section 721(c) property immediately before the deemed acceleration event for fair market value and satisfying the reporting required by §1.721(c)-6(b)(3)(i)(D). In this case, see paragraph (c) of this section regarding basis adjustments.

(c) *Consequences of an acceleration event.* Paragraphs (c)(1) and (2) of this section provide the consequences of an acceleration event with respect to section 721(c) property, a partial acceleration event with respect to section 721(c) property to the extent provided in §1.721(c)-5(d)(1), and a transfer described in section 367 of section 721(c) property to the extent provided in §1.721(c)-5(e).

(1) *U.S. transferor.* The U.S. transferor must recognize gain in an amount equal to the remaining built-in gain that would have been allocated to the U.S. transferor if the section 721(c) partnership had sold the section 721(c) property immediately before the acceleration event for fair market value. The U.S. transferor will increase its basis in its partnership interest by the amount of gain recognized. If the U.S. transferor is an indirect partner in the section 721(c) partnership through one or

more tiered partnerships, appropriate basis adjustments will be made to the interests in the tiered partnerships.

(2) *Section 721(c) partnership.* The section 721(c) partnership will increase its basis in the section 721(c) property by the amount of built-in gain recognized by the U.S. transferor under paragraph (c)(1) of this section. Any tax consequences of the acceleration event will be determined taking into account the increase in the partnership's adjusted tax basis in the section 721(c) property. If the section 721(c) property remains in the partnership after the acceleration event, the increase in basis of the section 721(c) property may be recovered using any applicable recovery period and depreciation (or other cost recovery) method (including first-year conventions) available to the partnership for newly purchased property of the same type placed in service on the date of the acceleration event. The section 721(c) property will no longer be subject to the gain deferral method.

(d) *Applicability dates.* This section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

*§1.721(c)-4T [Removed]*

Par. 15. Section 1.721(c)-4T is removed.

Par. 16. Section 1.721(c)-5 is added to read as follows:

*§1.721(c)-5 Acceleration event exceptions.*

(a) *Scope.* This section identifies exceptions to the acceleration events, which, like the rules regarding acceleration events provided in §1.721(c)-4(b), apply on a property-by-property basis. Paragraph (b) of this section identifies the events that terminate the requirement to apply the gain deferral method. Paragraph (c) of this section identifies the successor events that allow for the continued application of the gain deferral method. Paragraph (d) of this section identifies the partial acceleration events. Paragraph (e) of this section provides special rules for transfers of section 721(c) property to a foreign corporation described in section 367. Paragraph (f) of this section allows for the continued appli-

cation of the gain deferral method if there is a fully taxable disposition of a portion of an interest in a partnership. Paragraph (g) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see §1.721(c)-1(b).

(b) *Termination events*—(1) *In general.* Notwithstanding §1.721(c)-4(b)(1), a termination event with respect to section 721(c) property will not constitute an acceleration event. In these cases, the section 721(c) property will no longer be subject to the gain deferral method.

(2) *Transfers of section 721(c) property (other than a partnership interest) to a domestic corporation described in section 351.* A termination event occurs if a section 721(c) partnership transfers section 721(c) property (other than an interest in a partnership) to a domestic corporation in a transaction to which section 351 applies.

(3) *Certain incorporations of a section 721(c) partnership.* A termination event occurs upon an incorporation of a section 721(c) partnership into a domestic corporation by any method of incorporation (other than a method involving an actual distribution of partnership property to the partners, followed by a contribution of that property to a corporation), provided that the section 721(c) partnership is liquidated as part of the incorporation transaction.

(4) *Certain distributions of section 721(c) property.* A termination event occurs if a section 721(c) partnership distributes section 721(c) property either to the U.S. transferor or, if the U.S. transferor is a member of a consolidated group (as defined in §1.1502-1(h)) at the time of the distribution and the distribution occurs outside the seven-year period described in section 704(c)(1)(B), to a member of the consolidated group.

(5) *Partnership ceases to have a partner that is a related foreign person.* A termination event occurs when a section 721(c) partnership ceases to have any direct or indirect partners that are related foreign persons with respect to the U.S. transferor, provided there is no plan for a related foreign person to subsequently become a direct or indirect partner in the partnership (or a successor). This paragraph (b)(5) does not apply to a distribution of section 721(c) property in redemp-



tion of a related foreign person's interest in a section 721(c) partnership.

(6) *Fully taxable dispositions of section 721(c) property.* A termination event occurs if a section 721(c) partnership disposes of section 721(c) property in a transaction in which all gain or loss, if any, is recognized.

(7) *Fully taxable dispositions of an entire interest in a section 721(c) partnership.* A termination event occurs if a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner disposes of its entire interest in a section 721(c) partnership that owns the section 721(c) property in a transaction in which all gain or loss, if any, is recognized. This paragraph (b)(7) does not apply if a U.S. transferor is a member of a consolidated group (as defined in §1.1502-1(h)) and the interest in the section 721(c) partnership is transferred in an intercompany transaction (as defined in §1.1502-13(b)(1)); see paragraph (c)(3) of this section for a successor event rule applicable to these intercompany transactions.

(c) *Successor events*—(1) *In general.* Notwithstanding §1.721(c)-4(b)(1), a successor event with respect to section 721(c) property will not constitute an acceleration event. If a portion of an interest in a partnership is transferred in a successor event described in this paragraph (c), the principles of §1.704-3(a)(7) apply to determine the remaining built-in gain in section 721(c) property that is attributable to the portion of the interest that is transferred and the portion of the interest that is retained.

(2) *Transfers of an interest in a section 721(c) partnership by a U.S. transferor or upper-tier partnership to a domestic corporation in certain nonrecognition transactions.* A successor event occurs if a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner transfers (directly or indirectly through one or more partnerships) an interest in a section 721(c) partnership to a domestic corporation in a transaction to which section 351 or 381 applies, and the gain deferral method is continued by treating the transferee domestic corporation as the U.S. transferor for purposes of the section 721(c) regulations. If the transfer described in this paragraph (c)(2) also results in a termination under section 708(b)

(1)(B) of the section 721(c) partnership, see paragraph (c)(4) of this section.

(3) *Transfers of an interest in a section 721(c) partnership in an intercompany transaction.* A successor event occurs if a U.S. transferor that is a member of a consolidated group (as defined in §1.1502-1(h)) transfers (directly or indirectly through one or more partnerships) an interest in a section 721(c) partnership in an intercompany transaction (as defined in §1.1502-13(b)(1)), and the gain deferral method is continued by treating the transferee member as the U.S. transferor for purposes of the section 721(c) regulations. If the transfer described in this paragraph (c)(3) also results in a termination under section 708(b)(1)(B) of the section 721(c) partnership, see paragraph (c)(4) of this section.

(4) *Termination under section 708(b)(1)(B) of a section 721(c) partnership.* A successor event occurs if there is a termination under section 708(b)(1)(B) of a section 721(c) partnership, and the gain deferral method is continued by treating the new partnership as the section 721(c) partnership for purposes of the section 721(c) regulations.

(5) *Transactions involving tiered partnerships*—(i) *Contributions of section 721(c) property to a lower-tier partnership.* A successor event occurs if a section 721(c) partnership contributes the section 721(c) property to a partnership that is a controlled partnership with respect to the U.S. transferor (lower-tier section 721(c) partnership) and the requirements of paragraphs (c)(5)(i)(A) through (C) of this section are satisfied.

(A) The lower-tier section 721(c) partnership is a section 721(c) partnership or is treated as a section 721(c) partnership.

(B) The gain deferral method is applied with respect to the section 721(c) property in the hands of the lower-tier section 721(c) partnership.

(C) The gain deferral method is applied with respect to the section 721(c) partnership's interest in the lower-tier section 721(c) partnership. See §1.721(c)-3(b)(5) and (d)(2).

(ii) *Contributions of an interest in a section 721(c) partnership to an upper-tier partnership.* A successor event occurs if a U.S. transferor or a partnership in which a U.S. transferor is a direct or indi-

rect partner contributes (directly or indirectly through one or more partnerships) an interest in a section 721(c) partnership to a partnership that is a controlled partnership with respect to the U.S. transferor (upper-tier section 721(c) partnership) and the requirements of paragraphs (c)(5)(ii)(A) through (D) of this section are satisfied.

(A) The gain deferral method is continued with respect to the section 721(c) property in the hands of the section 721(c) partnership.

(B) The upper-tier section 721(c) partnership is, or is treated as, a section 721(c) partnership.

(C) If the upper-tier section 721(c) partnership directly owns its interest in the section 721(c) partnership, the gain deferral method is applied with respect to the upper-tier section 721(c) partnership's interest in the section 721(c) partnership. See §1.721(c)-3(b)(5) and (d)(1).

(D) If the upper-tier section 721(c) partnership indirectly owns its interest in the section 721(c) partnership through one or more partnerships, the principles of paragraphs (c)(5)(ii)(B) and (C) of this section are applied with respect to each partnership through which the upper-tier section 721(c) partnership indirectly owns an interest in the section 721(c) partnership.

(d) *Partial acceleration events*—(1) *In general.* Notwithstanding §1.721(c)-4, a partial acceleration event with respect to section 721(c) property does not constitute an acceleration event. In these cases, except as provided in paragraph (d)(3) of this section, the rules in §1.721(c)-4(c) (concerning the consequences of an acceleration event) for making basis adjustments apply to the extent that the U.S. transferor is required to recognize gain under paragraph (d)(2) or (3) of this section. Furthermore, if there is remaining built-in gain with respect to the section 721(c) property after the application of this paragraph (d), the application of the gain deferral method with respect to the section 721(c) property must be continued in the same manner.

(2) *Regulatory allocations.* If a regulatory allocation is described in §1.721(c)-3(c)(4)(i) but not in §1.721(c)-3(c)(4)(i)(A) or (B), a partial acceleration event occurs with respect to section 721(c)



property if the U.S. transferor recognizes an amount of gain (but not in excess of remaining built-in gain) equal to the amount of the allocation that, under the consistent allocation method, had the regulatory allocation not occurred, would have been allocated to the U.S. transferor in the case of income or gain, or would not have been allocated to the U.S. transferor in the case of deduction or loss.

(3) *Certain distributions of other partnership property to a partner that result in an adjustment under section 734.* A partial acceleration event occurs with respect to section 721(c) property if there is a distribution of other property by the section 721(c) partnership that results in a positive basis adjustment to the section 721(c) property under section 734. In these cases, the U.S. transferor must recognize an amount of gain (but not in excess of the remaining built-in gain) equal to the positive basis adjustment to the section 721(c) property under section 734, reduced (but not below zero) by the amount of gain recognized by the U.S. transferor (or a member of its consolidated group (as defined in §1.1502-1(h))) under section 731(a). In these cases, the partnership will not increase its basis under §1.721(c)-4(c)(2) by the amount of gain recognized by the U.S. transferor.

(e) *Transfers described in section 367 of section 721(c) property to a foreign corporation.* If a section 721(c) partnership transfers section 721(c) property, or a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner transfers (directly or indirectly through one or more partnerships) all or a portion of an interest in a section 721(c) partnership that owns section 721(c) property, to a foreign corporation in a transaction described in section 367, then the property will no longer be subject to the gain deferral method. To the extent any U.S. transferor is treated as transferring the section 721(c) property to the foreign corporation for purposes of section 367, the tax consequences will be determined under section 367. In this regard, see §§1.367(a)-1T(c)(3)(i) and (ii), 1.367(d)-1T(d)(1), and 1.367(e)-2(b)(1)(iii) (providing for the aggregate treatment of partnerships). However, for the remaining portion of the property (if any), the U.S. transferor must recognize an amount of gain equal

to the remaining built-in gain that would have been allocated to the U.S. transferor if the section 721(c) partnership had sold that portion of the section 721(c) property immediately before the transfer for fair market value. The stock in the transferee foreign corporation received will not be subject to the gain deferral method. The rules in §1.721(c)-4(c) (concerning the consequences of an acceleration event) for making basis adjustments will apply to the extent that the U.S. transferor recognizes gain under this paragraph (e).

(f) *Fully taxable dispositions of a portion of an interest in a partnership.* If a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner disposes of (directly or indirectly through one or more partnerships) a portion of an interest in a section 721(c) partnership in a transaction in which all gain or loss, if any, is recognized, an acceleration event will not occur with respect to the portion of the interest transferred. The gain deferral method will continue to apply with respect to the section 721(c) property of the section 721(c) partnership. The principles of §1.704-3(a)(7) will apply to determine the remaining built-in gain in section 721(c) property that is attributable to the portion of the interest in a section 721(c) partnership that is retained. This paragraph (f) will not apply to an intercompany transaction (as defined in §1.1502-13(b)(1)).

(g) *Applicability dates—(1) In general.* Except as provided in paragraph (g)(2) of this section, this section applies to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply this section retroactively.* This section may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying this section to the contribution on

a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017. §1.721(c)-5T [Removed]

Par. 17. Section 1.721(c)-5T is removed.

Par. 18. Section 1.721(c)-6 is added to read as follows

§1.721(c)-6 *Procedural and reporting requirements.*

(a) *Scope.* This section provides procedural and reporting requirements that must be satisfied under §1.721(c)-3(b)(3) of the gain deferral method. Paragraph (b) of this section describes the procedural and reporting requirements of a U.S. transferor. Paragraph (c) of this section describes information required to be reported with respect to related foreign persons and partnerships. Paragraph (d) of this section describes the procedural and reporting requirements of a section 721(c) partnership with a section 6031 filing obligation. Paragraph (e) of this section provides the proper signatory for the information provided under this section. Paragraph (f) of this section provides relief for certain failures to comply that are not willful. Paragraph (g) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see §1.721(c)-1(b).

(b) *Procedural and reporting requirements of a U.S. transferor—(1) In general.* This paragraph (b) describes the procedural and reporting requirements that a U.S. transferor (as defined §1.721(c)-1(b)(18)(i)) must satisfy in applying the gain deferral method. The information required under this paragraph (b) must be included with the U.S. transferor's timely filed return on (or attached to) the appropriate forms or schedules (or their successors) and must be submitted in the form and manner and to the extent prescribed by the forms and schedules (and their accompanying instructions).

(2) *Reporting of a gain deferral contribution.* A U.S. transferor must report the following information with respect to a gain deferral contribution:

(i) On Schedule A-1, Certain Foreign Partners, Schedule A-2, Foreign Partners of Section 721(c) Partnership, Schedule G, Statement of Application of the Gain Deferral Method Under Section 721(c), and Schedule H, Acceleration Events and

Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c) (for each such Schedule, with respect to Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships), as applicable, the following information with respect to the section 721(c) property—

(A) A description of the property and recovery period (or periods) for the property;

(B) Whether the property is an intangible described in section 197(f)(9);

(C) A calculation of the built-in gain, the basis, and fair market value on the date of the contribution, including the amount of gain recognized by the U.S. transferor, if any, on the gain deferral contribution;

(D) The name, U.S. taxpayer identification number (if any), address, and country of organization (if any) of each direct or indirect partner in the section 721(c) partnership that is a related person with respect to the U.S. transferor, and a description of each partner's interest in capital and profits immediately after the gain deferral contribution; and

(E) When the section 721(c) property is a partnership interest, the information described in paragraphs (b)(2)(i)(A) through (D) of this section with respect to each property of a lower-tier partnership to which the gain deferral method is applied under §1.721(c)-3(d)(1);

(ii) On Form 8838-P, Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)), an extension of the period of limitations on the assessment of tax as described in paragraph (b)(5) of this section;

(iii) A copy of the waiver of treaty benefits described in paragraph (c)(1) of this section (if any);

(iv) On Schedule A-1, Schedule A-2, and Schedule G (for each such Schedule, with respect to Form 8865), as applicable, information relating to the section 721(c) partnership described in paragraph (c)(2) of this section (if any);

(v) On, Schedule O, Transfer of Property to a Foreign Partnership (Form 8865) with respect to any foreign partnership, (or partnership treated as foreign under paragraph (b)(4) of this section), the information required under §1.6038B-2(c)(1) through (7); and

(vi) The information required under paragraph (b)(3) of this section.

(3) *Annual reporting relating to gain deferral method.* A U.S. transferor must annually report information for each gain deferral contribution. The information reported must be with respect to the partnership taxable year that ends with, or within, the taxable year of the U.S. transferor, beginning with the partnership's taxable year that includes the date of the gain deferral contribution and ending with the last taxable year in which the gain deferral method is applied to the section 721(c) property. The information reported must include:

(i) For each deferral contribution, the U.S. transferor must report the following information on Schedule G and Schedule H (for each Schedule, with respect to Form 8865), as applicable:

(A) The amount of book income, gain, deduction, and loss and tax items allocated to the U.S. transferor with respect to the section 721(c) property, including a description of any regulatory allocations;

(B) The proportion (expressed as a percentage) in which the book income, gain, deduction, and loss with respect to the section 721(c) property was allocated among the U.S. transferor and related persons that are partners in the section 721(c) partnership under the consistent allocation method;

(C) The amount of remaining built-in gain at the beginning of the taxable year, the remedial income allocated to the U.S. transferor under the remedial allocation method, the amount of built-in gain taken into account by reason of an acceleration event or partial acceleration event (if any), the partnership's adjustment to its tax basis in the section 721(c) property, and the remaining built-in gain at the end of the taxable year;

(D) A declaration stating whether an acceleration event or partial acceleration event occurred during the taxable year, the date of the event, and a description of the event (including a citation to the relevant paragraph of §1.721(c)-5(d) in the case of a partial acceleration event, and whether the acceleration event is described in §1.721(c)-4(b)(4));

(E) A description of a termination event or any successor event that occurred during the taxable year with a citation to

the relevant paragraph of §1.721(c)-5(b) or (c), the date of the event, and, in the case of a successor event, the name, address, and U.S. taxpayer identification number (if any) of any successor partnership, lower-tier partnership, upper-tier partnership, or U.S. corporation (as applicable);

(F) A description of all transfers of section 721(c) property to a foreign corporation described in §1.721(c)-5(e) that occurred during the taxable year, and for each transfer, the date of the transfer, the section 721(c) property transferred, and the name, address, and U.S. taxpayer identification number (if any) of the foreign transferee corporation; and

(G) With respect to section 721(c) property for which a waiver of treaty benefits was filed under paragraph (b)(2)(iii) of this section, a declaration that, after exercising reasonable diligence, to the best of the U.S. transferor's knowledge and belief, all income from the section 721(c) property allocated to the partners during the taxable year remained subject to taxation as income effectively connected with the conduct of a trade or business within the United States (under either section 871 or 882) for all direct or indirect partners that are related foreign persons with respect to the U.S. transferor (regardless of whether any such partner was a partner at the time of the gain deferral contribution), and, that neither the partnership nor any such partner has made any claim under any income tax convention to an exemption from U.S. income tax or a reduced rate of U.S. income taxation on income derived from the use of the section 721(c) property;

(ii) On Form 8838-P, an extension of the period of limitations on the assessment of tax, in the case of a gain deferral contribution, as described in paragraph (b)(5)(ii) of this section, and, in the case of certain contributions on which gain is recognized, as described in paragraph (b)(5)(iii) of this section;

(iii) If the section 721(c) partnership is a partnership that does not have a filing obligation under section 6031, the information described in §1.6038-3(g) (contents of information returns required of certain United States persons with respect to controlled foreign partnerships), if not already reported elsewhere, without regard to whether the section 721(c) partnership is

a controlled foreign partnership within the meaning of section 6038. If the U.S. transferor is not a controlling fifty-percent partner (as defined in §1.6038-3(a)), the U.S. transferor complies with the requirement of this paragraph (b)(3)(iii) by providing the information described in §1.6038-3(g)(1);

(iv) On Schedule O (Form 8865), a description of all section 721(c) property contributed by the U.S. transferor to the section 721(c) partnership (including pursuant to a contribution described in §1.721(c)-2(d)(1)) during the taxable year to which the gain deferral method is not applied; and

(v) The information required in paragraphs (c)(2) and (3) of this section for related foreign persons that are direct or indirect partners in the section 721(c) partnership and the section 721(c) partnership itself (if any).

(4) *Domestic partnerships treated as foreign.* Solely for purposes of this section, a U.S. transferor must treat a domestic section 721(c) partnership as a foreign partnership if the partnership was formed on or after January 18, 2017. If the section 721(c) partnership has an information return filing obligation under section 6031, that requirement is not affected by the requirement of this paragraph (b)(4) that the U.S. transferor treat the partnership as a foreign partnership.

(5) *Extension of period of limitations on assessment of tax.* In order to comply with the gain deferral method, a U.S. transferor must extend the period of limitations on the assessment of tax using Form 8838-P:

(i) With respect to the gain realized but not recognized on a gain deferral contribution, through the date that is 96 months after the close of the U.S. transferor's taxable year that includes the date of the gain deferral contribution;

(ii) With respect to all book and tax items with respect to the section 721(c) property allocated to the U.S. transferor in the partnership's taxable year that includes the date of the gain deferral contribution and the subsequent two years, through the date that is 72 months after the close of such taxable year with which, or within which, the partnership's taxable year ends; and

(iii) With respect to the gain recognized on a contribution of section 721(c)

property to a section 721(c) partnership for which the gain deferral method is not applied, if the contribution occurs within five partnership taxable years following a partnership taxable year that includes the date of a gain deferral contribution, through the date that is 60 months after the close of the U.S. transferor's taxable year that includes the date of the contribution on which gain is recognized.

(c) *Information with respect to section 721(c) partnerships and related foreign persons*—(1) *Effectively connected income.* If the gain deferral method is applied with respect to a contribution of section 721(c) property that satisfies the condition in §1.721(c)-3(b)(1)(ii), the U.S. transferor must obtain a statement from the section 721(c) partnership and from each related foreign person that is a direct or indirect partner in the section 721(c) partnership, titled "Statement of Waiver of Treaty Benefits under §1.721(c)-6," pursuant to which the partner and the partnership waive any claim under any income tax convention (whether or not currently in force at the time of the contribution) to an exemption from U.S. income tax or a reduced rate of U.S. income taxation on income derived from the use of the section 721(c) property for the period during which the section 721(c) property is subject to the gain deferral method.

(2) *Partnerships in tiered-partnership structures applying the gain deferral method.* If the gain deferral method is applied as a result of a transaction described in §1.721(c)-3(d), the U.S. transferor must supply all the information that a section 721(c) partnership would be required to report under paragraph (b) of this section if the section 721(c) partnership were a U.S. transferor.

(3) *Schedules K-1 for related foreign partners.* If a section 721(c) partnership does not have a filing obligation under section 6031, the U.S. transferor must obtain a Schedule K-1 (Form 8865), Partner's Share of Income, Deduction, Credits, etc., for all related foreign persons that are direct or indirect partners in the section 721(c) partnership.

(d) *Reporting and procedural requirements of a section 721(c) partnership with a section 6031 filing obligation*—(1) *Waiver of treaty benefits.* A section 721(c) partnership with a return filing obligation

under section 6031 must include its waiver of treaty benefits described in paragraph (c)(1) of this section with its tax return for the taxable year that includes the date of the gain deferral contribution.

(2) *Information on Schedule K-1.* A section 721(c) partnership with a return filing obligation under section 6031 must provide the relevant information necessary for the U.S. transferor to comply with the requirements in paragraphs (b)(2) and (3) of this section (using the Forms and Schedules specified in paragraphs (b)(2) and (3) of this section) with the U.S. transferor's Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc. The partnership must also attach a Schedule K-1 (Form 1065) to its Form 1065 for each direct or indirect partner that is a related foreign person with respect to the U.S. transferor.

(e) *Signatory.* Any statements required in this section must be signed under penalties of perjury by an agent of the U.S. transferor, the related foreign person that is a direct or indirect partner in the section 721(c) partnership, or the section 721(c) partnership, as applicable, that is authorized to sign under a general or specific power of attorney, or by an appropriate party. For the U.S. transferor, an appropriate party is a person described in §1.367(a)-8(e)(1). For a partnership with a section 6031 filing obligation, an appropriate party is any party authorized to sign Form 1065.

(f) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (f)(1) provides relief from the failure to comply with the procedural and reporting requirements of the gain deferral method prescribed by §1.721(c)-3(b)(3) and provided in paragraph (b) of this section if there is a failure to file or to include information required by this section (failure to comply). A failure to comply will be deemed not to have occurred for purposes of §1.721(c)-3(b)(3) if the U.S. transferor demonstrates that the failure was not willful using the procedure provided in this paragraph (f). For purposes of this paragraph (f), willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure



to comply was willful will be determined by the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances. The U.S. transferor must submit a request for relief and an explanation as provided in paragraph (f)(2) of this section. A U.S. transferor whose failure to comply is determined not to be willful under this paragraph (f) will be subject to a penalty under section 6038B if it fails to satisfy the applicable reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See §1.6038B-2(h). The determination of whether the failure to comply was willful under this section has no effect on any request for relief made under §1.6038B-2(h).

(2) *Procedures for establishing that a failure to comply was not willful*—(i) *Time and manner of submission.* A U.S. transferor's statement that a failure to comply was not willful will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section as well as a written statement explaining the reasons for the failure to comply. The U.S. transferor also must file, with the amended return, a Schedule O (Form 8865) and Form 8838-P (as described in paragraph (b)(5) of this section), completed and executed as prescribed in forms and instructions, consenting to extend the period of limitations on assessment of tax with respect to the gain realized but not recognized on the gain deferral contribution to the later of the date that is 96 months after the close of the U.S. transferor's taxable year that includes the date of the gain deferral contribution (*date one*), or the date that is 36 months after the date on which the required information is provided to the Director (*date two*). However, the U.S. transferor is not required to file a Schedule O (Form 8865), with the amended return if both *date one* is later than *date two* and a consent to extend the period

of limitations on assessment of tax with respect to the gain realized but not recognized on the gain deferral contribution for the U.S. transferor's taxable year that includes the date of the contribution was previously submitted with a Schedule O (Form 8865). The amended return and either a Schedule O (Form 8865) or a copy of the previously filed Schedule O (Form 8865), as the case may be, must be filed with the Internal Revenue Service at the location where the U.S. transferor filed its original return. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See §1.6038B-2(h) (3).

(ii) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(i) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (f)(2)(ii). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return must be delivered to the Director.

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Reporting relating to effectively connected income.* Paragraphs (b)(2)(iii), (b)(3)(i)(G), and (d)(1) of this section apply to a contribution occurring on or after August 6, 2015, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015, and, in either case, provided §1.721(c)-3(b)(1) (ii) applies to the contribution. To the extent that a previously filed return did not comply with paragraph (b)(2)(iii), (b)(3) (i)(G), or (d)(1) of this section, an amend-

ed return complying with such paragraphs must have been filed no later than July 18, 2017.

(3) *Transition rules*—(i) *Reporting under sections 6038, 6038B, and 6046A.* For transfers occurring on or after August 6, 2015, and for transfers that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015, a U.S. transferor (or a domestic partnership in which a U.S. transferor is a direct or indirect partner) must fulfill any reporting requirements imposed under sections 6038, 6038B, and 6046A with respect to the contribution of the section 721(c) property to the section 721(c) partnership.

(ii) *Reporting using statements instead of prescribed forms and schedules.* For tax returns filed before July 17, 2020, reporting that met the requirements of §1.721(c)-6T (see 26 CFR part 1, revised as of April 1, 2019) as in effect before January 1, 2020, will be deemed to satisfy the corresponding requirements of this section.

#### *§1.721(c)-6T [Removed]*

Par. 19. Section 1.721(c)-6T is removed.

Par. 20. Section 1.721(c)-7 is added to read as follows:

#### *§1.721(c)-7 Examples.*

(a) *Presumed facts.* For purposes of the examples in paragraph (b) of this section, assume that there are no other transactions that are related to the transactions described in the examples and that all partnership allocations have substantial economic effect under section 704(b). For definitions that apply for purposes of this section, see §1.721(c)-1(b). Except where otherwise indicated, the following facts are presumed—

(1) USP and USX are domestic corporations that each use a calendar taxable year. USX is not a related person with respect to USP.

(2) CFC1, CFC2, FX, and FY are foreign corporations.

(3) USP wholly owns CFC1 and CFC2. Neither FX nor FY is a related person with respect to USP or with respect to each other.

(4) PRS1, PRS2, and PRS3 are foreign entities classified as partnerships for U.S.



tax purposes. A partnership interest in PRS1, PRS2, and PRS3 is not described in section 475(c)(2).

(5) A taxable year is referred to, for example, as year 1.

(6) A partner in a partnership has the same percentage interest in income, gain, loss, deduction, and capital of the partnership.

(7) No property is described in section 197(f)(9) in the hands of a contributing partner.

(8) No partnership is a controlled partnership solely under the facts and circumstances test in §1.721(c)-1(b)(4).

(b) *Examples.* The application of the rules stated in §§1.721(c)-1 through 1.721(c)-6 may be illustrated by the following examples:

(1) *Example 1: Determining if a partnership is a section 721(c) partnership—* (i) *Facts.* In year 1, USP and CFC1 form PRS1 as equal partners. CFC1 contributes cash of \$1.5 million to PRS1, and USP contributes three properties to PRS1: a patent with a book value of \$1.2 million and an adjusted tax basis of zero, a security (within the meaning of section 475(c)(2)) with a book value of \$100,000 and an adjusted tax basis of \$20,000, and a machine with a book value of \$200,000 and an adjusted tax basis of \$600,000.

(ii) *Results.* (A) Under §1.721(c)-1(b)(18)(i), USP is a U.S. transferor because USP is a U.S. person and not a domestic partnership. Under §1.721(c)-1(b)(2), the patent has built-in gain of \$1.2 million. The patent is not excluded property under §1.721(c)-1(b)(6). Therefore, under §1.721(c)-1(b)(15)(i), the patent is section 721(c) property because it is property, other than excluded property, with built-in gain that is contributed by a U.S. transferor, USP.

(B) Under §1.721(c)-1(b)(2), the security has built-in gain of \$80,000. Under §1.721(c)-1(b)(6) (ii), the security is excluded property because it is described in section 475(c)(2). Therefore, the security is not section 721(c) property.

(C) The tax basis of the machine exceeds its book value. Under §1.721(c)-1(b)(6)(iii), the machine is excluded property and therefore is not section 721(c) property.

(D) Under §1.721(c)-1(b)(12), CFC1 is a related person with respect to USP, and under §1.721(c)-1(b)(11), CFC1 is a related foreign person. Because USP and CFC1 collectively own at least 80 percent of the interests in the capital, profits, deductions, or losses of PRS1, under §1.721(c)-1(b)(14)(i), PRS1 is a section 721(c) partnership upon the contribution by USP of the patent.

(E) The de minimis exception described in §1.721(c)-2(c) does not apply to the contribution because during PRS1's year 1 the sum of the built-in gain with respect to all section 721(c) property contributed in year 1 to PRS1 is \$1.2 million, which exceeds the de minimis threshold of \$1 million. As a result, under §1.721(c)-2(b), section 721(a) does not apply to USP's contribution of the patent to PRS1,

unless the requirements of the gain deferral method are satisfied.

(2) *Example 2: Determining if partnership interest is section 721(c) property—* (i) *Facts.* In year 1, USP and FX form PRS2. USP contributes a security (within the meaning of section 475(c)(2)) with a book value of \$100,000 and an adjusted tax basis of \$20,000 and a building located in country X with a book value of \$30,000 and an adjusted tax basis of \$8,000 in exchange for a 40-percent interest. FX contributes a machine with a book value of \$195,000 and an adjusted tax basis of \$250,000 in exchange for a 60-percent interest.

(ii) *Results.* PRS2 is not a section 721(c) partnership because FX is not a related person with respect to USP. USP's contributions to PRS2 are not subject to §1.721(c)-2(b).

(iii) *Alternative facts and results.* (A) The facts are the same as in paragraph (b)(2)(i) of this section (the facts in *Example 2*). In addition, USP and CFC1 form PRS1 as equal partners. CFC1 contributes cash of \$130,000 to PRS1, and USP contributes its 40-percent interest in PRS2.

(B) PRS2's property consists of a security and a machine that are excluded property, and a building with built-in gain in excess of \$20,000. Under §1.721(c)-1(b)(6)(iv), because more than 90 percent of the value of the property of PRS2 consists of excluded property described in §1.721(c)-1(b)(6) (i) through (iii) (the security and the machine), any interest in PRS2 is excluded property. Therefore, the 40-percent interest in PRS2 contributed by USP to PRS1 is not section 721(c) property. Accordingly, USP's contribution of its interest in PRS2 to PRS1 is not subject to §1.721(c)-2(b).

(3) *Example 3: Assets-over tiered partnerships—* (i) *Facts.* In year 1, USP and CFC1 form PRS1 as equal partners. USP contributes a patent with a book value of \$300 million and an adjusted tax basis of \$30 million (USP contribution). CFC1 contributes cash of \$300 million. Immediately thereafter, PRS1 contributes the patent to PRS2 in exchange for a two-thirds interest (PRS1 contribution), and CFC2 contributes cash of \$150 million in exchange for a one-third interest. The patent has a remaining recovery period of 5 years out of a total of 15 years. With respect to all contributions described in §1.721(c)-2(b), the de minimis exception does not apply, and the gain deferral method is applied. Thus, the partnership agreements of PRS1 and PRS2 provide that the partnership will make allocations under section 704(c) using the remedial allocation method under §1.704-3(d).

(ii) *Results: USP contribution.* PRS1 is a section 721(c) partnership as a result of the USP contribution.

(iii) *Results: PRS1 contribution.* (A) For purposes of determining whether PRS2 is a section 721(c) partnership as a result of the PRS1 contribution, under §1.721(c)-2(d)(1), USP is treated as contributing to PRS2 its share of the patent that PRS1 actually contributes to PRS2. USP and CFC1 are each one-third indirect partners in PRS2. Taking into account the one-third interest in PRS2 directly owned by CFC2, USP, CFC1, and CFC2 collectively own at least 80 percent of the interests in PRS2. Thus, PRS2 is a section 721(c) partnership as a result of the PRS1 contribution.

(B) Under §1.721(c)-2(b), section 721(a) does not apply to PRS1's contribution of the patent to PRS2, unless the requirements of the gain deferral method are satisfied. Under §1.721(c)-3(b), the gain deferral method must be applied with respect to the patent. In addition, under §1.721(c)-3(d)(2), because PRS1 is a controlled partnership with respect to USP, the gain deferral method must be applied with respect to PRS1's interest in PRS2, and, solely for purposes of applying the consistent allocation method, PRS2 must treat PRS1 as the U.S. transferor. As stated in paragraph (b)(3)(i) of this section (the facts in *Example 3*), the gain deferral method is applied. PRS2 is a controlled partnership with respect to USP. Under §1.721(c)-5(c)(5)(i), the PRS1 contribution is a successor event with respect to the USP contribution.

(iv) *Results: application of remedial allocation method.* (A) Under §1.704-3(d)(2), in year 1, PRS2 has \$24 million of book amortization with respect to the patent (\$6 million (\$30 million of book value equal to adjusted tax basis divided by the 5-year remaining recovery period) plus \$18 million (\$270 million excess of book value over tax basis divided by the new 15-year recovery period)). PRS2 has \$6 million of tax amortization. Under the PRS2 partnership agreement, PRS2 allocates \$8 million of book amortization to CFC2 and \$16 million of book amortization to PRS1. Because of the application of the ceiling rule, PRS2 allocates \$6 million of tax amortization to CFC2 and \$0 of tax amortization to PRS1. Because the ceiling rule would cause a disparity of \$2 million between CFC2's book and tax amortization, PRS2 must make a remedial allocation of \$2 million of tax amortization to CFC2 and an offsetting remedial allocation of \$2 million of taxable income to PRS1.

(B) PRS1's distributive share of each of PRS2's items with respect to the patent is \$16 million of book amortization, \$0 of tax amortization, and \$2 million of taxable income from the remedial allocation from PRS1. Under §1.704-3(a)(9), PRS1 must allocate its distributive share of each of PRS2's items with respect to the patent in a manner that takes into account USP's remaining built-in gain in the patent. Therefore, PRS1 allocates \$2 million of taxable income to USP. Under §1.704-3(a)(13)(ii), PRS1 treats its distributive share of each of PRS2's items of amortization with respect to PRS2's patent as items of amortization with respect to PRS1's interest in PRS2. Under the PRS1 partnership agreement, PRS1 allocates \$8 million of book amortization and \$0 of tax amortization to CFC1, and \$8 million of book amortization and \$0 of tax amortization to USP. Because the ceiling rule would cause a disparity of \$8 million between CFC1's book and tax amortization, PRS1 must make a remedial allocation of \$8 million of tax amortization to CFC1. PRS1 must also make an offsetting remedial allocation of \$8 million of taxable income to USP. USP reports \$10 million of taxable income (\$2 million of remedial income from PRS2 and \$8 million of remedial income from PRS1).

(4) *Example 4: Section 721(c) partnership ceases to have a related foreign person as a partner—* (i) *Facts.* In year 1, USP and CFC1 form PRS1. USP contributes a trademark with a built-in gain of \$5 million in exchange for a 60-percent interest, and CFC1 contributes other property in exchange for

the remaining 40-percent interest. With respect to all contributions described in §1.721(c)-2(b), the de minimis exception does not apply, and the gain deferral method is applied. On day 1 of year 4, CFC1 sells its entire interest in PRS1 to FX. There is no plan for a related foreign person with respect to USP to subsequently become a partner in PRS1 (or a successor).

(ii) *Results.* (A) PRS1 is a section 721(c) partnership.

(B) With respect to year 4, under §1.721(c)-5(b)(5), the sale is a termination event because, as a result of CFC1's sale of its interest, PRS1 will no longer have a partner that is a related foreign person, and there is no plan for a related foreign person to subsequently become a partner in PRS1 (or a successor). Thus, under §1.721(c)-5(b)(1), the trademark is no longer subject to the gain deferral method.

(5) *Example 5: Transfer described in section 367 of section 721(c) property to a foreign corporation*—(i) *Facts.* In year 1, USP, CFC1, and USX form PRS1. USP contributes a patent with a built-in gain of \$5 million in exchange for a 60-percent interest, CFC1 contributes other property in exchange for a 30-percent interest, and USX contributes cash in exchange for a 10-percent interest. With respect to all contributions described in §1.721(c)-2(b), the de minimis exception does not apply, and the gain deferral method is applied. In year 3, when the patent has remaining built-in gain, PRS1 transfers the patent to FX in a transaction described in section 351.

(ii) *Results.* (A) PRS1 is a section 721(c) partnership.

(B) With respect to year 3, the transfer of the patent to FX is a transaction described in section 367(d). Therefore, under §1.721(c)-5(e), the patent is no longer subject to the gain deferral method. Under §§1.367(d)-1T(d)(1) and 1.367(a)-1T(c)(3)(i), for purposes of section 367(d), USP and USX are treated as transferring their proportionate share of the patent actually transferred by PRS1 to FX. Under §1.721(c)-5(e), to the extent USP and USX are treated as transferring the patent to FX, the tax consequences are determined under section 367(d) and the regulations under section 367(d). With respect to the remaining portion of the patent, if any, which is attributable to CFC1, USP must recognize an amount of gain equal to the remaining built-in gain that would have been allocated to USP if PRS1 had sold that portion of the patent immediately before the transfer for fair market value. Under §1.721(c)-4(c)(1), USP must increase the basis in its partnership interest in PRS1 by the amount of gain recognized by USP and under §1.721(c)-4(c)(2), immediately before the transfer, PRS1 must increase its basis in the patent by the same amount. The stock in FX received by PRS1 is not subject to the gain deferral method.

(6) *Example 6: Limited remedial allocation method for anti-churning property with respect to related partners*—(i) *Facts.* USP, CFC1, and FX form PRS1. On January 1 of year 1, USP contributes intellectual property (IP) with a book value of \$600 million and an adjusted tax basis of \$0 in exchange for a 60-percent interest. The IP is a section 197(f)(9) intangible (within the meaning of §1.197-2(h)(1)(i)) that was not an amortizable section 197 intangible in USP's hands. CFC1 contributes cash of \$300 million in exchange for a 30-percent interest, and FX contributes cash of \$100 million in exchange for a 10-percent interest. The IP is section 721(c)

property, and PRS1 is a section 721(c) partnership. The gain deferral method is applied. The partnership agreement provides that PRS1 will make allocations under section 704(c) with respect to the IP using the remedial allocation method under §1.704-3(d)(5)(iii). All of PRS1's allocations with respect to the IP satisfy the requirements of the gain deferral method. On January 1 of year 16, PRS1 sells the IP for cash of \$900 million to a person that is not a related person. During years 1 through 16, PRS1 earns no income other than gain from the sale of the IP in year 16, has no expenses or deductions other than from amortization of the IP, and makes no distributions.

(ii) *Results: year 1.* Under §1.704-3(d)(5)(iii)(B), PRS1 must recover the excess of the book value of the IP over its adjusted tax basis at the time of the contribution (\$600 million) using any recovery period and amortization method that would have been available to PRS1 if the property had been newly purchased property from an unrelated party. Thus, under section 197(a), PRS1 must amortize \$600 million of the IP's book value ratably over 15 years for book purposes, and PRS1 will have \$40 million of book amortization per year without any tax amortization. Under the partnership agreement, in year 1, PRS1 allocates book amortization of \$24 million to USP, \$12 million to CFC1, and \$4 million to FX. Because in year 1 the ceiling rule would cause a disparity between FX's allocations of book and tax amortization, PRS1 makes a remedial allocation of tax amortization of \$4 million to FX and an offsetting remedial allocation of \$4 million of taxable income to USP. In year 1, the ceiling rule would also cause a disparity between CFC1's allocations of book and tax amortization. However, §1.197-2(h)(12)(vii)(B) precludes PRS1 from making a remedial allocation of tax amortization to CFC1. Instead, pursuant to §1.704-3(d)(5)(iii)(C), PRS1 increases the adjusted tax basis in the IP by \$12 million, and pursuant to §1.704-3(d)(5)(iii)(D), that basis adjustment is solely with respect to CFC1. Pursuant to §1.704-3(d)(5)(iii)(C), PRS1 also makes an offsetting remedial allocation of \$12 million of taxable income to USP.

(iii) *Results: years 2-15.* At the end of year 15, PRS1 has book basis and adjusted tax basis of \$0 in the IP. PRS1 has amortized \$600 million for book purposes by allocating total book amortization deductions of \$360 million to USP, \$180 million to CFC1, and \$60 million to FX. For U.S. tax purposes, by the end of year 15, PRS1 has made remedial allocations of \$60 million of tax amortization to FX and increased the adjusted tax basis in the IP by \$180 million solely with respect to CFC1. PRS1 has also made total remedial allocations of \$240 million of taxable income to USP (attributable to \$60 million of remedial tax amortization to FX and \$180 million of tax basis adjustments with respect to CFC1). With respect to their partnership interests in PRS1, USP has a capital account and an adjusted tax basis of \$240 million, CFC1 has a capital account of \$120 million and an adjusted tax basis of \$300 million, and FX has a capital account and an adjusted tax basis of \$40 million.

(iv) *Results: sale of property in year 16.* PRS1's sale of the IP for cash of \$900 million on January 1 of year 16 results in \$900 million of book and tax gain (\$900 million - \$0). PRS1 allocates the book and tax gain 60 percent to USP (\$540 million), 10 percent to FX (\$90 million), and 30 percent to

CFC1 (\$270 million). However, under §1.704-3(d)(5)(iii)(D)(3), CFC1's tax gain is \$90 million, equal to its share of PRS1's gain (\$270 million), minus the amount of the tax basis adjustment (\$180 million). After the sale, PRS1's only property is cash of \$1.3 billion. With respect to their partnership interests in PRS1, USP has a capital account and an adjusted tax basis of \$780 million, CFC1 has a capital account and an adjusted tax basis of \$390 million, and FX has a capital account and an adjusted tax basis of \$130 million.

§ 1.721(c)-7T [Removed]

Par. 21. Section 1.721(c)-7T is removed.

Par. 22. Section 1.6038B-2 is amended by:

1. Revising paragraphs (a)(1)(iii), (a)(3), and (c)(8) and (9).
2. In paragraph (h)(1) introductory text, removing “§1.721(c)-6T” and adding “§1.721(c)-6” in its place.
3. Revising paragraphs (h)(3) and (j)(4) and (5).

The revisions read as follows:

§1.6038B-2 *Reporting of certain transfers to foreign partnerships.*

(a) \* \* \*

(1) \* \* \*

(iii) The United States person is a U.S. transferor (as defined in §1.721(c)-1(b)(18)) that makes a gain deferral contribution and is required to report under §1.721(c)-6(b)(2). The reporting required under this paragraph (a) includes the annual reporting required by §1.721(c)-6(b)(3). For purposes of applying this paragraph (a)(1)(iii) to partnerships formed on or after January 18, 2017, a domestic partnership is treated as a foreign partnership pursuant to section 7701(a)(4).

\* \* \* \* \*

(3) *Indirect transfer through a foreign partnership.* Solely for purposes of this section, if a foreign partnership transfers section 721(c) property (as defined in §1.721(c)-1(b)(15)) to another foreign partnership in a transfer described in §1.721(c)-3(d) (tiered-partnership rules), then the transferor foreign partnership's partners will be considered to have transferred a proportionate share of the property to the foreign partnership.

\* \* \* \* \*

(c) \* \* \*

(8) With respect to reporting required under §1.721(c)-6(b)(2) and paragraph (a)(1)(iii) of this section with regard to a gain deferral contribution, the information required by §1.721(c)-6(b)(2); and

(9) With respect to section 721(c) property for which reporting is required under §1.721(c)-6(b)(3) and paragraph (a)(1)(iii) of this section, the information required by §1.721(c)-6(b)(3).

\* \* \* \* \*

(h) \* \* \*

(3) *Reasonable cause exception.* Under section 6038B(c)(2) and this section, the provisions of paragraph (h)(1) of this section will not apply if the United States person shows, in a timely manner, that a failure to comply was due to reasonable cause and not willful neglect. A United States person's statement that the failure to comply was due to reasonable cause and not willful neglect will be considered timely only if, promptly after the United States person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to comply. If any taxable year of the United States person is under examination when the amended return is filed, a copy of the amended return must be delivered to the Internal Revenue Service personnel conducting the examination when the amended return is filed. If no taxable year of the United States person is under examination when the amended return is filed, a copy of the amended return must be delivered to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director). Whether a failure to comply was due to reasonable cause and not willful neglect will be determined by the Director under all the facts and circumstances.

\* \* \* \* \*

(j) \* \* \*

(4) *Transfers of section 721(c) property.* Paragraph (c)(8) of this section applies to transfers occurring on or after August 6, 2015, and to transfers that occurred before August 6, 2015 resulting from an entity classification election made under §301.7701-3 of this chapter that was effective on or before August 6, 2015 but

was filed on or after August 6, 2015. Paragraphs (a)(1)(iii), (a)(3), and (c)(9) of this section apply to transfers occurring on or after January 18, 2017, and to transfers that occurred before January 18, 2017 resulting from entity classification elections made under §301.7701-3 of this chapter that were effective on or before January 18, 2017 but were filed on or after January 18, 2017.

(5) *Reasonable cause exception.* Paragraph (h)(3) of this section applies to all requests for relief for transfers of property to partnerships filed on or after January 18, 2017.

§1.6038-2T [Removed]

Par. 23. Section 1.6038B-2T is removed.

Sunita Lough

*Deputy Commissioner for Services and Enforcement.*

Approved: December 11, 2019

David J. Kautter

*Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on January 17, 2020, 4:15 p.m., and published in the issue of the Federal Register for January 23, 2020, 85 F.R. 3833)

26 CFR Parts 1 and 31

## T.D. 9892

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 31

### Return Due Date and Extended Due Date Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that update the due dates and available extensions of time to file

certain tax returns and information returns. The dates are updated to reflect the statutory requirements set by section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 and section 201 of the Protecting Americans from Tax Hikes Act of 2015. Additionally, the regulations remove a provision for electing large partnerships that was made obsolete by section 1101(b)(1) of the Bipartisan Budget Act of 2015. These regulations affect taxpayers who file Form W-2 (series, except Form W-2G), Form W-3, Form 990 (series), Form 1099-MISC, Form 1041, Form 1041-A, Form 1065, Form 1065-B, Form 1120 (series), Form 4720, Form 5227, Form 6069, Form 8804, or Form 8870.

**DATES: Effective Date:** These regulations are effective January 30, 2020.

**Applicability Date:** For dates of applicability, see §§1.1446-3(g), 1.6012-6(c), 1.6031(a)-1(f), 1.6032-1(b), 1.6033-2(k), 1.6041-2(d), 1.6041-6(c), 1.6072-2(g), 1.6081-1(c), 1.6081-2(h), 1.6081-3(g), 1.6081-5(f), 1.6081-6(g), 1.6081-9(f), and 31.6071(a)-1(g).

**FOR FURTHER INFORMATION CONTACT:** Isaac Brooks Fishman, (202) 317-6845 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains final regulations that reflect changes in tax return due dates enacted by section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41, 129 Stat. 443 (2015), as well as changes to information return due dates enacted by section 201 of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114-113, Div. Q, 129 Stat. 2242 (2015). On July 20, 2017, the IRS published in the **Federal Register** temporary regulations (TD 9821 (82 FR 33441)) that conformed the due dates and the available extensions of time to file various tax returns and information returns to those provided by statute. The temporary regulations were applicable for tax returns and information returns filed after July 20,



2017, with an expiration date of July 17, 2020.

The IRS published a notice of proposed rulemaking (REG-128483-15 (82 FR 33467)) cross-referencing the temporary regulations in the **Federal Register** the same day it published the temporary regulations. The IRS received no comments on the notice of proposed rulemaking, and no public hearing was requested or held.

This Treasury Decision removes the temporary regulations and adopts the proposed regulations as final regulations with only nonsubstantive revisions. The revisions are discussed in the Explanation of Provisions.

### Explanation of Provisions

A detailed explanation of these regulations can be found in the preamble to the temporary regulations. One additional provision of these regulations that is not discussed in the preamble to the temporary regulations is explained below.

Section 1.6081-2(a)(1) of the proposed regulations addresses the extension of time for a partnership to file Form 1065, “U.S. Partnership Return of Income,” or Form 8804, “Annual Return for Partnership Withholding Tax.” Similarly, §1.6081-2(a)(2) of the final regulations in place prior to the publication of this Treasury Decision addressed the extension of time to file Form 1065-B, “U.S. Return of Income for Electing Large Partnerships.” Section 1101(b)(1) of the Bipartisan Budget Act of 2015, Public Law 114-74, 129 Stat. 625 (2015), repealed part IV of subchapter K of chapter 1 of subtitle A of the Internal Revenue Code (Code), which, prior to repeal, provided in former sections 771 through 777 for the treatment of certain partnerships as electing large partnerships. The amendment was effective for returns filed for partnership taxable years beginning after December 31, 2017. As a consequence, electing large partnerships do not exist and Forms 1065-B will not be filed for taxable years beginning after December 31, 2017.

Because §1.6081-2(a)(2) is therefore obsolete, and the only remaining effective provision in §1.6081-2(a) was §1.6081-2(a)(1), this Treasury Decision removes §1.6081-2(a)(2) and redesignates proposed §1.6081-2(a)(1) as §1.6081-2(a).

This change is purely ministerial and has no substantive effect. Accordingly, the IRS finds good cause for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and with a delayed effective date pursuant to 5 U.S.C. 553(d) for this change.

### Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. These regulations only update the due dates and extensions of time to file certain collections of information and include some existing regulatory language concerning collections of information that affect small entities for the convenience of the reader.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received from the Small Business Administration.

### Drafting Information

The principal author of these regulations is Jonathan R. Black formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

#### 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

### Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are 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. Revise paragraphs (b)(2)(v)(C) and (g) of §1.1446-3 to read as follows:

*§1.1446-3 Time and manner of calculating and paying over the 1446 tax.*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) \* \* \*

(C) *Period of underpayment.* The period of the underpayment set forth in section 6655(b)(2) shall end on the earlier of the date the partnership is required to file Form 8804 (as provided in paragraph (d)(1)(iii) of this section and without regard to extensions), or with respect to any portion of the underpayment, the date on which such portion is paid.

\* \* \* \* \*

(g) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 1.1446-3T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

#### §1.1446-3T [Removed]

Par. 3. Section 1.1446-3T is removed.

Par. 4. Revise paragraph (a)(1) and add paragraph (c) to §1.6012-6 to read as follows:

*§1.6012-6 Returns by political organizations.*

(a) \* \* \* (1) *In general.* For taxable years beginning after December 31, 1974, every political organization described in section 527(e)(1), and every fund described in section 527(f)(3) or section 527(g), and every organization described in section 501(c) and exempt from taxation under section 501(a) shall, if a tax is imposed on such an organization or fund by section 527(b), make a return of income on or before the fifteenth day of the fourth month following the close of the taxable year.

\* \* \* \* \*

(c) *Applicability date.* This section applies to returns filed on or after January 30,



2020. Section 1.6012-6T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

#### **§1.6012-6T [Removed]**

Par. 5. Section 1.6012-6T is removed.

Par. 6. Revise paragraphs (e)(2) and (f) of §1.6031(a)-1 to read as follows:

*§1.6031(a)-1 Return of partnership income.*

\* \* \* \* \*

(e) \* \* \*

(2) *Time for filing.* The return of a partnership must be filed on or before the date prescribed by section 6072(b).

\* \* \* \* \*

(f) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 1.6031(a)-1T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

#### **§1.6031(a)-1T [Removed]**

Par. 7. Section 1.6031(a)-1T is removed.

Par. 8. Revise §1.6032-1 to read as follows:

*§1.6032-1 Returns of banks with respect to common trust funds.*

(a) Every bank (as defined in section 581) maintaining a common trust fund shall make a return of income of the common trust fund, regardless of the amount of its taxable income. Member banks of an affiliated group that serve as co-trustees with respect to a common trust fund must act jointly in making a return for the fund. If a bank maintains more than one common trust fund, a separate return shall be made for each. No particular form is prescribed for making the return under this section, but Form 1065 may be used if it is designated by the bank as the return of a common trust fund. The return shall be made for the taxable year of the common trust fund and shall be filed on or before the date prescribed by section 6072(b) with the service center prescribed in the relevant Internal Revenue Service revenue procedure, publication, form, or instructions to the form (see §601.601(d) (2) of this chapter). Such return shall state specifically with respect to the fund the items of gross income and the deductions

allowed by subtitle A of the Internal Revenue Code, shall include each participant's name and address, the participant's proportionate share of taxable income or net loss (exclusive of gains and losses from sales or exchanges of capital assets), the participant's proportionate share of gains and losses from sales or exchanges of capital assets, and the participant's share of items which enter into the determination of the tax imposed by section 56. See §§1.584-2 and 1.58-5. If the common trust fund is maintained by two or more banks that are members of the same affiliated group, the return must also identify the member bank in the group that has contributed each participant's property or money to the fund. A copy of the plan of the common trust fund must be filed with the return. If, however, a copy of such plan has once been filed with a return, it need not again be filed if the return contains a statement showing when and where it was filed. If the plan is amended in any way after such copy has been filed, a copy of the amendment must be filed with the return for the taxable year in which the amendment was made. For the signing of a return of a bank with respect to common trust funds, see §1.6062-1, relating to the manner prescribed for the signing of a return of a corporation.

(b) This section applies to returns filed on or after January 30, 2020. Section 1.6032-1T (as contained in 26 CFR part 1, revised April 2019) applies to taxable years beginning before January 30, 2020.

#### **§1.6032-1T [Removed]**

Par. 9. Section 1.6032-1T is removed.

Par. 10. Revise paragraphs (e) and (k) of §1.6033-2 to read as follows:

*§1.6033-2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).*

\* \* \* \* \*

(e) *Time and place for filing.* The annual return required by this section shall be filed on or before the 15th day of the fifth month following the close of the period for which the return is required to be filed. The annual return on Form 1065 required to be filed by a religious or apostolic association or corporation shall be filed on or before the date prescribed by section

6072(b). Each such return shall be filed in accordance with the instructions applicable thereto.

\* \* \* \* \*

(k) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 1.6033-2T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

#### **§1.6033-2T [Removed]**

Par. 11. Section 1.6033-2T is removed.

Par. 12. Revise paragraph (a)(3)(ii) and add paragraph (d) to §1.6041-2 to read as follows:

*§1.6041-2 Return of information as to payments to employees.*

(a) \* \* \*

(3) \* \* \*

(ii) *Exception.* In a case where an employer is not required to file Forms W-3 and W-2 under §31.6011(a)-4 or §31.6011(a)-5 of this chapter, returns on Forms W-3 and W-2 required under this paragraph (a) for any calendar year shall be filed on or before January 31 of the following year.

\* \* \* \* \*

(d) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 1.6041-2T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

#### **§1.6041-2T [Removed]**

Par. 13. Section 1.6041-2T is removed.

Par. 14. Revise §1.6041-6 to read as follows:

*§1.6041-6 Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing.*

(a) *In general.* Except as provided in paragraph (b) of this section, returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms. The name and address of the person making the payment and the name and address of the recipient of the payment shall be stated on Form 1099. If the present address of the recipient is not available, the last

known post office address must be given. See section 6109 and the regulations in part 301 of this title under section 6109 for rules requiring the inclusion of identifying numbers in Form 1099.

(b) *Exception.* Returns made on Form 1099 reporting nonemployee compensation shall be filed on or before January 31 of the year following the calendar year to which such returns relate.

(c) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 1.6041-6T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

#### **§1.6041-6T [Removed]**

Par. 15. Section 1.6041-6T is removed.

Par. 16. Revise paragraphs (a) and (d)(1) and (2) and add paragraph (g) to §1.6072-2 to read as follows:

*§1.6072-2 Time for filing returns of corporations.*

(a) *Domestic and certain foreign corporations—(1) In general—(i) C corporations.* Except as provided in paragraph (a)(2) of this section, the income tax return required under section 6012 of a domestic C corporation (as defined in section 1361(a)(2)) or of a foreign C corporation having an office or place of business in the United States shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year.

(ii) *S corporations.* The income tax return required under sections 6012 and 6037 of an S corporation (as defined in section 1361(a)(1)) shall be filed on or before the fifteenth day of the third month following the close of the taxable year.

(2) *Exception.* For taxable years beginning before January 1, 2026, the income tax return of a C corporation described in paragraph (a)(1)(i) of this section that has a taxable year that ends on June 30 shall be filed on or before the fifteenth day of the third month following the close of the taxable year. For purposes of this paragraph (a)(2), the return for a short period (within the meaning of section 443) that ends on any day in June shall be treated as the return for a taxable year that ends on June 30.

\*\*\*\*\*

(d) \* \* \*

(1) *Section 521 associations.* A farmers', fruit growers', or like association, organized and operated in compliance with the requirements of section 521 and §1.521-1; and

(2) *Section 1381 corporations.* For a taxable year beginning after December 31, 1962, a corporation described in section 1381(a)(2), which is under a valid enforceable written obligation to pay patronage dividends (as defined in section 1388(a) and §1.1388-1(a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings. Net earnings for purposes of this paragraph (d)(2) shall not be reduced by any taxes imposed by subtitle A of the Internal Revenue Code and shall not be reduced by dividends paid on capital stock or other proprietary interest.

\*\*\*\*\*

(g) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 1.6072-2T (as contained in 26 CFR part 1, revised April 2019) applies to returns before January 30, 2020.

#### **§1.6072-2T [Removed]**

Par. 17. Section 1.6072-2T is removed.

Par. 18. Revise paragraphs (a) and (c) of §1.6081-1 to read as follows:

*§1.6081-1 Extension of time for filing returns.*

(a) *In general.* The Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document that relates to any tax imposed by subtitle A of the Internal Revenue Code (Code) and that is required under the provisions of subtitle A or F of the Code. However, other than in the case of taxpayers who are abroad or as specified in section 6081(b), such extensions of time shall not be granted for more than six months, and the extension of time for filing the return of a DISC (as defined in section 992(a)), as specified in section 6072(b), shall not be granted. Except in the case of an extension of time pursuant to §1.6081-5, an extension of time for filing an income tax return shall not operate to extend the time for the payment of the

tax unless specified to the contrary in the extension. For rules relating to extensions of time for paying tax, see §1.6161-1.

\*\*\*\*\*

(c) *Applicability date.* This section applies to requests for extension of time to file returns on or after January 30, 2020. Section 1.6081-1T (as contained in 26 CFR part 1, revised April 2019) applies to requests for extension of time to file returns before January 30, 2020.

#### **§1.6081-1T [Removed]**

Par. 19. Section 1.6081-1T is removed.

Par. 20. Revise paragraphs (a) and (h) of §1.6081-2 to read as follows:

*§1.6081-2 Automatic extension of time to file certain returns filed by partnerships.*

(a) *In general.* A partnership required to file Form 1065, "U.S. Partnership Return of Income," or Form 8804, "Annual Return for Partnership Withholding Tax," for any taxable year will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing the return if the partnership files an application under this section in accordance with paragraph (b) of this section. No additional extension will be allowed pursuant to §1.6081-1(b) beyond the automatic six-month extension provided by this section. In the case of a partnership described in §1.6081-5(a)(1), the automatic extension of time to file allowed under this section runs concurrently with an extension of time to file granted pursuant to §1.6081-5.

\*\*\*\*\*

(h) *Applicability date.* This section applies to applications for an automatic extension of time to file the partnership returns listed in paragraph (a) of this section on or after January 30, 2020. Section 1.6081-2T (as contained in 26 CFR part 1, revised April 2019) applies to applications for an automatic extension of time to file before January 30, 2020.

#### **§1.6081-2T [Removed]**

Par. 21. Section 1.6081-2T is removed.

Par. 22. Revise paragraphs (a) introductory text and (e) through (g) of §1.6081-3 to read as follows:

*§1.6081-3 Automatic extension of time for filing corporation income tax returns.*

(a) *In general.* Except as provided in paragraphs (e) and (f) of this section, a corporation or an affiliated group of corporations filing a consolidated return will be allowed an automatic 6-month extension of time to file its income tax return after the date prescribed for filing the return if the following requirements are met.

\*\*\*\*\*

(e) *Exception.* In the case of any return for a taxable year of a C corporation that ends on June 30 and begins before January 1, 2026, the first sentence of paragraph (a) of this section shall be applied by substituting “7-month” for “6-month.” For purposes of this paragraph (e), the return for a short period (within the meaning of section 443) that ends on any day in June shall be treated as the return for a taxable year that ends on June 30.

(f) *Cross reference.* For provisions relating to extensions of time to file Form 1120-POL, “U.S. Income Tax Return for Certain Political Organizations,” see §1.6081-9.

(g) *Applicability date.* This section applies to requests for extension of time to file corporation income tax returns on or after January 30, 2020. Section 1.6081-3T (as contained in 26 CFR part 1, revised April 2019) applies to applications for an automatic extension of time to file before January 30, 2020.

#### §1.6081-3T [Removed]

Par. 23. Section 1.6081-3T is removed.

Par. 24. Revise paragraphs (a)(1) and (f) of §1.6081-5 to read as follows:

*§1.6081-5 Extensions of time in the case of certain partnerships, corporations and U.S. citizens and residents.*

(a) \*\*\*

(1) Partnerships, which are required under section 6072(b) to file returns on the fifteenth day of the third month following the close of the taxable year of the partnership, that keep their records and books of account outside the United States and Puerto Rico;

\*\*\*\*\*

(f) This section applies to returns filed on or after January 30, 2020. Section 1.6081-5T (as contained in 26 CFR part 1, revised April 2019) applies to applications for an automatic extension of time to file returns before January 30, 2020.

#### §1.6081-5T [Removed]

Par. 25. Section 1.6081-5T is removed.

Par. 26. Revise paragraphs (a)(1) and (g) of §1.6081-6 to read as follows:

*§1.6081-6 Automatic extension of time to file estate or trust income tax return.*

(a) \*\*\* (1) Except as provided in paragraph (a)(2) of this section, any estate, including but not limited to an estate defined in section 2031, or trust required to file an income tax return on Form 1041, “U.S. Income Tax Return for Estates and Trusts,” will be allowed an automatic five and one-half month extension of time to file the return after the date prescribed for filing the return if the estate or trust files an application under this section in accordance with paragraph (b) of this section. No additional extension will be allowed pursuant to §1.6081-1(b) beyond the automatic five and one-half month extension provided by this section.

\*\*\*\*\*

(g) *Applicability date.* This section applies to applications for an automatic extension of time to file an estate or trust income tax return on or after January 30, 2020. Section 1.6081-6T (as contained in 26 CFR part 1, revised April 2019) applies to applications for an automatic extension of time to file a return before January 30, 2020.

#### §1.6081-6T [Removed]

Par. 27. Section 1.6081-6T is removed.

Par. 28. Revise paragraphs (a), (b)(1) and (3), and (c) through (f) of §1.6081-9 to read as follows:

*§1.6081-9 Automatic extension of time to file exempt or political organization returns.*

(a) *In general.* An entity required to file a return on a form in the Form 990 series (Form 990, “Return of Organization Exempt From Income Tax,” Form 990-BL, “Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons,” Form 990-EZ, “Short Form Return of Organization Exempt From Income Tax,” Form 990-PF, “Return of Private Foundation,” and Form 990-T, “Exempt Organization Business Tax Return”), Form 1041-A, “U.S. Information Return-Trust Accumulation of Charitable Amounts,” Form 1120-POL,

“U.S. Income Tax Return for Certain Political Organizations,” Form 4720, “Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,” Form 5227, “Split-Interest Trust Information Return,” Form 6069, “Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction,” and Form 8870, “Information Return for Transfers Associated With Certain Personal Benefit Contracts,” will be allowed an automatic six-month extension of time to file the return after the date prescribed for filing if the entity files an application in accordance with paragraph (b) of this section.

(b) \*\*\*

(1) Be submitted on Form 7004, “Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns” (in the case of an extension of time to file Form 1120-POL), Form 8868, “Application for Automatic Extension of Time to File an Exempt Organization Return” (in the case of an extension of time to file any other return listed in paragraph (a) of this section), or in any other manner as may be prescribed by the Commissioner;

\*\*\*\*\*

(3) Show the full amount properly estimated as tentative tax for the entity for the taxable year; and

\*\*\*\*\*

(c) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the entity a notice of termination. The notice must be mailed at least 10 days prior to the termination date designated in such notice. The notice of termination must be mailed to the address shown on the application for extension or to the entity’s last known address. For further guidance regarding the definition of last known address, see §301.6212-2 of this chapter.

(d) *Penalties.* See sections 6651 and 6652(c) for failure to file a return or failure to pay the amount shown as tax on the return.

(e) *Coordination with §1.6081-1.* No extension of time will be granted under §1.6081-1 for filing a return listed in paragraph (a) of this section until an automatic



extension has been allowed pursuant to this section.

(f) *Applicability date.* This section applies to requests for extensions of time to file returns listed in paragraph (a) of this section on or after January 30, 2020. Sections 1.6081-3T and 1.6081-9T (as contained in 26 CFR part 1, revised April 2019) apply to requests for extensions before January 30, 2020.

#### **\$1.6081-9T [Removed]**

Par. 29. Section 1.6081-9T is removed.

#### **PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE**

Par. 30. The authority citation for part 31 continues to read in part as follows:

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

Par. 31. Revise paragraph (a)(3) and add paragraph (g) to §31.6071(a)-1 to read as follows:

*§31.6071(a)-1 Time for filing returns and other documents.*

(a) \* \* \*

(3) *Information returns*—(i) *General rule.* Each information return in respect of wages as defined in the Federal Insurance Contributions Act or of income tax withheld from wages as required under §31.6051-2 must be filed on or before January 31 of the year following the calendar year for which it is made, except that, if a tax return under §31.6011(a)-5(a) is filed as a final return for a period ending prior to December 31, the information return must be filed on or before the last day of the first month following the period for which the tax return is filed.

(ii) *Expedited filing.* If an employer who is required to make a return pursuant to §31.6011(a)-1 or §31.6011(a)-4 is required to make a final return on Form 941, or a variation thereof, under §31.6011(a)-6(a) (1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages), the return which is required to be made under §31.6051-2 must be filed on or before the last day of the first month following the period for which the final return is filed. The requirements set forth in this paragraph (a) (3)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See §31.6011(a)-1(a)(3).

\* \* \* \* \*

(g) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 31.6071(a)-1T (as contained in 26 CFR part 31, revised April 2019) applies to returns filed before January 30, 2020.

#### **§31.6071(a)-1T [Removed]**

Par. 32. Section 31.6071(a)-1T is removed.

Sunita Lough,  
*Deputy Commissioner for Services  
and Enforcement.*

Approved: November 25, 2019.

David J. Kautter,  
*Assistant Secretary of the Treasury  
(Tax Policy).*

(Filed by the Office of the Federal Register on January 29, 2020, 8:45 a.m., and published in the issue of the Federal Register for January 30, 2020, 85 FR 5323)

## **Section 42.—Low-Income Housing Credit**

(Also Section 7805; 301.7805-1)

### **Rev. Rul. 2020-4**

### **ISSUE**

For purposes of the low-income housing credit under § 42 of the Internal Revenue Code (Code), how should the income limits in the average income test under § 42(g)(1)(C) be computed?

### **LAW**

The Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986 Act) created the low-income housing credit under § 42 of the Code.

Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction (determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under § 42(d)). Sections 42(c) and 42(d) define applicable fraction and eligible basis. Section 42(d)(1) and (2) define the eligible basis of a new building and an existing building, respectively.

Generally, section 42(c)(2) defines a qualified low-income building as any building that is part of a qualified low-income housing project at all times during the compliance period (the period of 15 taxable years beginning with the first taxable year of the credit period). To qualify as a low-income housing project, one of the § 42(g) minimum set-aside tests, as elected by the taxpayer, must be satisfied.

Prior to the enactment of the Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018 Act), § 42(g) set forth two minimum set-aside tests, known as the 20-50 test and the 40-60 test. Under the 20-50 test, at least 20 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 50 percent or less of the area median gross income (AMGI). Under the 40-60 test, at least 40 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 60 percent or less of AMGI.

Section 103 of Division T of the 2018 Act added a third minimum set-aside test, the average income test, under § 42(g)(1)(C). Section 42(g)(1)(C)(i) provides that, a project meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project located in a high cost housing area) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit.

Section 42(g)(1)(C)(ii) provides special rules relating to the income limitation. Specifically, the taxpayer must designate the imputed income limitation for each unit. The designated imputed income limitation of any unit must be 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. The av-

erage of the designated imputed income limitations must not exceed 60 percent of AMGI.

Under § 42(g), once a taxpayer elects to use a particular set-aside test, that election is irrevocable. Section 42(g)(4) provides generally that § 142(d)(2) applies for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit.

Section 142(d)(2)(B) provides that the income of individuals and AMGI is determined in a manner consistent with determinations of lower income families and AMGI under Section 8 of the United States Housing Act of 1937 (Section 8) or, if the Section 8 program is terminated, under the program as in effect immediately before the termination. Determinations under the preceding sentence include adjustments for family size.<sup>1</sup>

In determining eligibility for various aspects of the Section 8 program, the Department of Housing and Urban Development (HUD) uses three different principal income level calculation categories: (1) low-income; (2) very low-income; and (3) extremely low-income. Specifically, HUD sets the low-income limits at 80 percent of AMGI, the very low-income limits at 50 percent of AMGI, and the extremely low-income limits at the higher of 30 percent of AMGI or the “Federal Poverty Level.” See HUD, FY2019 INCOME LIMITS, METHODOLOGY FOR DETERMINING SECTION 8 LIMITS at 1 (2019) (hereinafter, HUD METHODOLOGY).<sup>2</sup>

In describing the unique role of the very low-income limits, HUD explains, “The very low-income limits (usually based on 50 percent of median incomes) are the basis of all other income limits, as they are the best-defined income limits and have been the subject of specific, limited legislative adjustments subsequent to reviews of the HUD calculation methodology.” HUD METHODOLOGY at 2. Several of the HUD income limit standards are intended to have progressive relationships with respect to other limits and, to ensure this, unless there is explicit statutory lan-

guage to the contrary, HUD uses the very low-income limits as the basis for deriving these limits. *Id.*

The conference committee report for the 1986 Act states that HUD’s AMGI as adjusted by family size serves as the base for computing the income limits of § 42(g). See H.R. Rep. No. 99-841, 1986-3 C.B. Vol. 2. The report provides further, in part, that, for purposes of the then-existing set-aside tests (the 20-50 and 40-60 tests), for areas with unusually low family income or high housing costs relative to family income, adjustments should be made in a manner consistent with determinations of very low-income families and AMGI under Section 8. *Id.*

Rev. Rul. 89-24, 1989-1 C.B. 24 (as modified and superseded in part by Rev. Rul. 94-57, 1994-2 C.B. 5 for the limited purpose of permitting taxpayers to rely on a list of income limits released by HUD), provides the manner in which to properly compute the income limits applicable under § 42 with respect to the 20-50 and 40-60 tests. The income limits are computed based on the income limits of the very low-income families under Section 8, as adjusted by family size. This is consistent with the legislative history’s reference to HUD’s very low-income limits.

## ANALYSIS AND HOLDING

Consistent with the holding in Rev. Rul. 89-24, the Internal Revenue Service (Service) has required that HUD’s determinations for very low-income families be used in calculating the low-income housing credit income limits of 50 percent and 60 percent of AMGI. In adding the average income test, Congress did not indicate that a different HUD income level calculation category should be used, and therefore, this revenue ruling continues to use HUD’s determinations for very low-income families.

Moreover, for purposes of Section 8, HUD makes numerous, additional adjustments to arrive at the low-income (80 percent) and extremely low-income

(30 percent) determinations. See HUD METHODOLOGY at 2. Those adjustments may be irrelevant to the overall structure of the low-income housing credit. Additionally, when HUD seeks for its income limit determinations to have a progressive relationship with respect to other limit determinations, HUD bases its income limit calculations on the very low-income limits. Similarly, because § 42(g)(1)(C)(ii)(II) requires computing an average of the income limits, the relationship of all of the limits under the average income set-aside should be preserved and uniformly incremental. Therefore, these income limits should be determined by computing them all from the same basis, that is, from HUD’s very low-income limits.

For these reasons, this revenue ruling holds that HUD’s very low-income calculation, as adjusted by family size and consistent with the methods provided in Rev. Rul. 89-24, is to be used as the basis for determining the full range of income limits under the average-income set-aside. As described in Rev. Rul. 89-24, the income limits for the very low-income families for purposes of Section 8 are computed and listed according to family size by HUD. HUD computes and lists these limits for metropolitan areas (some Core Based Statistical Areas (CBSAs) as defined by the Office of Management and Budget (OMB) and some HUD-defined components of OMB-defined CBSAs)<sup>3</sup> and for nonmetropolitan counties of the United States and Puerto Rico. HUD also computes and releases income limits for Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

For the average income test under § 42(g)(1)(C), the 20, 30, 40, 50, 60, 70, and 80 percent of AMGI income limitations must be calculated as follows—

Twenty (20) percent limit: 40 percent or less of the income limit for a very low-income family of the same size.

Thirty (30) percent limit: 60 percent or less of the income limit for a very low-income family of the same size.

<sup>1</sup> For descriptions of the Department of Housing and Urban Development’s (HUD’s) determinations of income limits, see HUD, FY2019 INCOME LIMITS, FREQUENTLY ASKED QUESTIONS (2019), [https://www.huduser.gov/portal/datasets/il/il19/FAQs\\_19.pdf](https://www.huduser.gov/portal/datasets/il/il19/FAQs_19.pdf), and HUD, ASSESSMENT OF SMALL AREA MEDIAN FAMILY INCOME ESTIMATES (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Assessment-of-Small-Area-Median-Family-Income-Estimates.pdf>.

<sup>2</sup> <https://www.huduser.gov/portal/datasets/il/il19/IncomeLimitsMethodology-FY19.pdf>.

<sup>3</sup> HUD identifies Core Based Statistical Areas (CBSAs) with the “Metropolitan Statistical Area (MSA)” designation, and HUD-defined metropolitan areas as “HUD Metropolitan Fair Market Rent Areas (HMFAs).” The set of CBSAs and HMFAs together identify the complete list of OMB-defined metropolitan areas.

Forty (40) percent: 80 percent or less of the income limit for a very low-income family of the same size.

Fifty (50) percent: equal to or less than the income limit for a very low-income family of the same size.

Sixty (60) percent: 120 percent or less of the income limit for a very low-income family of the same size.

Seventy (70) percent limit: 140 percent or less of the income limit for a very low-income family of the same size.

Eighty (80) percent limit: 160 percent or less of the income limit for a very low-income family of the same size.

As provided by Rev. Rul. 94-57, 1994-2 C.B. 5, a list of income limits released by HUD may be relied upon until 45 days after HUD releases a new list of income limits, or until HUD's effective date for this new list, whichever is later.

## **EFFECT ON OTHER REVENUE RULINGS**

Rev. Rul. 89-24, as modified and superseded by Rev. Rul. 94-57 in part, is amplified.

## **PROSPECTIVE APPLICATION**

Pursuant to § 7805(b)(8), the application of this revenue ruling is modified to the extent provided below:

(1) If—

(A) The taxpayer submitted a document to a State or local housing credit agency (Agency) as part of, or in connection with, the taxpayer's request for an allocation of a housing credit dollar amount for a project,

(B) The request unambiguously indicated that the taxpayer intended to elect the average-income set-aside, the request unambiguously indicated that a specific dollar amount was an expected designated imputed income limitation for a unit in the project, and that dollar amount is higher than the amount determined under this revenue ruling,

(C) The taxpayer's treatment of that amount in this manner was reasonable, and

(D) Prior to February 18, 2019, the Agency allocated a housing credit amount in response to that request, then, consistent with the second sentence of § 42(g)(2)(A), for that taxpayer, for the remaining compliance period of the building that contains the relevant unit, the dollar amount for the income limits under this revenue ruling for that unit is not less than that reasonable amount.

(2) If—

(A) Paragraph (1) of this prospective application section of this revenue ruling applies to a project,

(B) When a tenant began occupancy of a unit in the project, the tenant's income exceeded the amount that would otherwise be required by this revenue ruling, but

(C) The tenant's income at that time did not exceed the amount that paragraph (1) permits to be used for that unit,

then, for purposes of § 42(g)(2)(D), the tenant is treated as having initially met the income limitation for the unit.

Except as expressly provided in this prospective application section of this revenue ruling, both a low-income housing project that has elected the average income test and tenants in such a project must meet all other rules and requirements of § 42.

## **DRAFTING INFORMATION**

The principal author of this revenue ruling is Dillon Taylor of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Mr. Taylor at (202) 317-4137 (not a toll-free number).



# Part III

26 CFR 601.201: Rulings and determination letters.

## Rev. Proc. 2020-8

### SECTION 1. PURPOSE

This revenue procedure modifies Revenue Procedure 2020-5, 2020-1 I.R.B. 241, by updating the procedures for Exempt Organizations determination letters with respect to the electronically submitted Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, which is the application used to apply for recognition of exemption as an entity described in § 501(c)(3). The modifications to Rev. Proc. 2020-5 made by this revenue procedure provide that the electronic submission process is the exclusive means of submitting a completed Form 1023, except for submissions eligible for the 90-day transition relief provided in section 4 of this revenue procedure.

### SECTION 2. CHANGED SUBMISSION PROCESS

The IRS has revised and updated Form 1023 and provided for it to be electronically submitted at [www.pay.gov](http://www.pay.gov). The electronic submission process for Form 1023 replaces the paper submission process for Form 1023 after January 31, 2020, subject to the transition relief provided in section 4 of this revenue procedure. Section 3 of this revenue procedure modifies Rev. Proc. 2020-5 to set forth procedures for issuing determination letters in response to electronically submitted Form 1023 applications. Unless otherwise modified in this revenue procedure, the provisions of Rev. Proc. 2020-5 continue to apply.

### SECTION 3. MODIFICATIONS TO REVENUE PROCEDURE 2020-5

.01 Section 4.01 of Rev. Proc. 2020-5 is modified to read as follows:

.01 This section explains the general instructions for requesting determination letters. However, certain procedures do not apply to requests submitted on Form 1023, *Application for Recognition of Ex-*

*emption Under Section 501(c)(3) of the Internal Revenue Code* or Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, as indicated in this revenue procedure or in forms and their instructions. In addition to these general instructions, specific procedures apply to requests submitted by letter (as described in section 5), applications for recognition of exemption from Federal income tax under § 501 or § 521 (as described in section 6), and to requests for determinations submitted on Form 8940, *Request for Miscellaneous Determination* (as described in section 7).

.02 Paragraph (1) of section 4.02 of Rev. Proc. 2020-5 is modified to read as follows:

(1) **Form 1023 application.** An organization seeking recognition of exemption under § 501(c)(3) (including an organization that is additionally seeking a determination that it is described in § 501(e), (f), (k), (n), (q), or (r)) must electronically submit a completed Form 1023 at [www.pay.gov](http://www.pay.gov). In the case of an organization that provides credit counseling services, see § 501(q). In the case of an organization that is a hospital and is seeking exemption under § 501(c)(3), see § 501(r). Notwithstanding the foregoing, eligible organizations may seek recognition of exemption under § 501(c)(3) by submitting a completed Form 1023-EZ, as described in section 6.06(2) of this revenue procedure, rather than by submitting Form 1023. For additional information about the electronic submission process, refer to Form 1023 and its Instructions.

.03 The first paragraph of section 4.09(1) of Rev. Proc. 2020-5 is modified to read as follows:

(1) **Procedures for requesting expedited handling.** Except for a request on the electronically submitted Form 1023, the request for expedited handling must be made in writing, preferably in a separate letter sent with, or soon after filing, the request for the determination letter. If the request is not made in a separate letter, then the letter in which the determination letter request is made should say, at the top of the first page: **“Expedited Handling Is Requested. See page \_\_\_\_ of this letter.”**

In the case of the electronically submitted Form 1023, a request for expedited handling must be indicated on the form and a supporting written statement must be submitted as an attachment with the completed application.

.04 Section 6.06(1)(a) of Rev. Proc. 2020-5 is modified to read as follows:

(1) A completed application (other than a Form 1023-EZ), including a letter application, is one that:

(a) is signed or, in the case of a Form 1023, is electronically signed by an authorized individual under penalties of perjury (see sections 4.04 and 4.06 of this revenue procedure);

.05 Paragraph (4) of section 6.08 of Rev. Proc. 2020-5 is modified to read as follows:

(4) **When an application is not submitted within 27 months of formation.**

An organization that otherwise meets the requirements for tax-exempt status and the issuance of a determination letter that does not meet the requirements for recognition from date of formation will be recognized from the postmark date of its application or the electronic submission date of its Form 1023 or Form 1023-EZ, as applicable.

.06 Paragraph (1) of section 14.06 of Rev. Proc. 2020-5 is modified to read as follows:

(1) **Payment of user fees for applications of recognition of exemption on Form 1023 or Form 1023-EZ.** User fees for applications for recognition of exemption on Form 1023 or Form 1023-EZ must be paid through [www.pay.gov](http://www.pay.gov).

.07 Section 15.01(1)(a) of Rev. Proc. 2020-5 is modified to read as follows:

(1) The following types of requests and applications handled by the EO Determinations Office should be sent to the Internal Revenue Service Center, at the address in section 15.01(2):

(a) applications for recognition of tax exemption on Form 1024, Form 1024-A, and Form 1028;

.08 Section 15.02 of Rev. Proc. 2020-5 is modified to read as follows:

.02 Applications for recognition of exemption on Form 1023 and Form 1023-EZ are handled by the EO Determinations Office but must be submitted electronically.

ly online at [www.pay.gov](http://www.pay.gov). Paper submissions of Form 1023 or Form 1023-EZ will not be accepted.

.09 Paragraph (4) of Appendix A of Rev. Proc. 2020-5 is modified to read as follows:

(4) Canadian registered charities

**Note:** In accordance with the income tax treaty between the United States and Canada, and pursuant to a mutual arrangement between the competent authorities of the two countries, Canadian registered charities are automatically recognized as exempt under § 501(c)(3) without filing an application for exemption. For details, see Notice 99-47, 1999-2 C.B. 391. Therefore, no user fee is required when a Canadian registered charity submits a written request to be listed in Tax Exempt Organization Search database for organizations eligible to receive tax-deductible charitable contributions (Pub. 78 data), or for

a determination on its private foundation status. For additional information about the submission process, refer to the Form 1023 Instructions.

#### **SECTION 4. TRANSITION RELIEF**

.01 Except as provided in section 4.02, an organization seeking recognition of tax exempt status under § 501(c)(3) using Form 1023 must electronically submit the form and user fee online at [www.pay.gov](http://www.pay.gov).

.02 The Internal Revenue Service will accept for processing a completed paper Form 1023 accompanied by the correct user fee, as described in Rev. Proc. 2020-5, without applying the modifications of this revenue procedure, if the submission of the Form 1023 is postmarked on or before the date that is 90 days after the effective date of this revenue procedure.

#### **SECTION 5. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2020-5 is modified.

#### **SECTION 6. EFFECTIVE DATE**

This revenue procedure is effective January 31, 2020, the date this revenue procedure was announced by news release.

#### **SECTION 7. DRAFTING INFORMATION**

The principal author of this revenue procedure is Patrick Sternal of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure contact Mr. Sternal at (202) 317-5800 (not a toll-free number).

# Definition of Terms

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

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

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

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

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

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

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

new ruling does more than restate the 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.  
FR—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

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



## Numerical Finding List<sup>1</sup>

Bulletin 2020–8

### Announcements:

2020-1, 2020-5 I.R.B. 552

### Notices:

2020-1, 2020-2 I.R.B. 290

2020-2, 2020-3 I.R.B. 327

2020-3, 2020-3 I.R.B. 330

2020-4, 2020-4 I.R.B. 380

2020-5, 2020-4 I.R.B. 380

2020-6, 2020-7 I.R.B. 411

2020-7, 2020-7 I.R.B. 411

2020-8, 2020-7 I.R.B. 415

2020-9, 2020-7 I.R.B. 417

### Proposed Regulations:

REG-107431-19, 2020-3 I.R.B. 332

REG-122180-18, 2020-3 I.R.B. 342

REG-100956-19, 2020-4 I.R.B. 383

REG-125710-18, 2020-5 I.R.B. 554

### Treasury Decisions:

9886, 2020-2 I.R.B. 285

9887, 2020-3 I.R.B. 302

9888, 2020-3 I.R.B. 306

9891, 2020-8 I.R.B. 419

9892, 2020-8 I.R.B. 439

### Revenue Procedures:

2020-1, 2020-01 I.R.B. 1

2020-2, 2020-01 I.R.B. 107

2020-3, 2020-01 I.R.B. 131

2020-4, 2020-01 I.R.B. 148

2020-5, 2020-01 I.R.B. 241

2020-7, 2020-01 I.R.B. 281

2020-9, 2020-02 I.R.B. 294

2020-10, 2020-02 I.R.B. 295

2020-11, 2020-06 I.R.B. 406

2020-8, 2020-08 I.R.B. 447

### Revenue Rulings:

2020-1, 2020-3 I.R.B. 296

2020-2, 2020-3 I.R.B. 298

2020-3, 2020-3 I.R.B. 409

2020-4, 2020-4 I.R.B. 444

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletin 2020–8

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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## **We Welcome Comments About the Internal Revenue Bulletin**

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