

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 2014-14, page 948.

This Announcement is issued pursuant to section 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning Advance Pricing Agreements (APAs) and the APMA Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year from 2000 through 2012. This Fifteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2013. It does not provide guidance regarding the application of the arm's length standard.

INCOME TAX

Notice 2014-20, page 937.

This Notice postpones until October 15, 2014, the deadline to make an election under § 165(i) to deduct in the preceding taxable year losses attributable to September 2013 major flooding sustained in federally declared disaster areas in Colorado.

Notice 2014-21, page 938.

This notice explains how existing general tax principles apply to transactions using virtual currency.

Notice 2014-23, page 942.

This notice provides guidance for 2014 that will allow taxpayers who are the victims of domestic violence to satisfy the joint filing requirement of § 36B(c)(1)(C) with a married-filing-separate return, in order to obtain the premium tax credit. The notice also informs that the IRS and Treasury will be issuing regulations on this subject.

Announcement 2014-14, page 948.

This Announcement is issued pursuant to section 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning Advance Pricing Agreements (APAs) and the APMA Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year from 2000 through 2012. This Fifteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2013. It does not provide guidance regarding the application of the arm's length standard.

EMPLOYEE PLANS

Rev. Proc. 2014-28, page 944.

This revenue procedure modifies Rev. Proc. 2013-22, 2013-18 I.R.B. 985, which sets forth the procedures of the Internal Revenue Service (Service) for issuing opinion and advisory letters for § 403(b) pre-approved plans (that is, § 403(b) prototype plans and § 403(b) volume submitter plans). Under the program established by Rev. Proc. 2013-22, as modified by this revenue procedure, the Service will accept applications for opinion and advisory letters regarding the acceptability under § 403(b) of the Internal Revenue Code of the form of prototype plans and volume submitter plans, respectively, through April 30, 2015. This revenue procedure also makes certain modifications to the program established by Rev. Proc. 2013-22 that are intended to allow more plan sponsors and eligible employers to participate in the § 403(b) pre-approved plan program. The appendix to Rev. Proc. 2013-22 is revised accordingly.

(Continued on the next page)

Finding Lists begin on page ii.
Index for July through April begins on page iv.



Department of the Treasury
Internal Revenue Service

Announcement 2014–15, page 973.

This announcement addresses the application to Individual Retirement Accounts and Individual Retirement Annuities (collectively, “IRAs”) of the one-rollover-per-year limitation of § 408(d)(3)(B) of the Internal Revenue Code and provides transition relief for owners of IRAs.

EMPLOYMENT TAX

T.D. 9662, page 933.

The final regulations clarify the employment tax obligations of a third party (payor) where the third party enters into a service agreement with an employer to pay wages to employees of the employer and take on other employment tax responsibilities of the employer. Under the final regulations, the Service may designate the payor to perform acts required of the employer. Under the final regulations, both the employer and the payor are liable for the employer’s employment tax obligations. The final regulations also provide exceptions for when a payor will not be designated to perform acts of the employer.

Notice 2014–21, page 938.

This notice explains how existing general tax principles apply to transactions using virtual currency.

SELF-EMPLOYMENT TAX

Notice 2014–21, page 938.

This notice explains how existing general tax principles apply to transactions using virtual currency.

EXCISE TAX

Notice 2014–24, page 942.

This notice provides a temporary safe harbor for an entity that reports expatriate health insurance plans on its Supplemental Health Care Exhibit (SHCE). For the 2014 and 2015 fee years, it allows such an entity to exclude 50% of its direct premiums written for expatriate plans in reporting total direct premiums written to the IRS for purposes of determining its Affordable Care Act (ACA) § 9010 Health Insurance Providers Fee.

ADMINISTRATIVE

Notice 2014–21, page 938.

This notice explains how existing general tax principles apply to transactions using virtual currency.

Notice 2014–22, page 940.

This notice updates the appendix to Notice 2013–1, which lists the Indian tribes who have settled tribal trust cases against the United States. Notice 2012–60 originally was published in IRB 2012–41 (October 9, 2012). Notice 2012–60 was superseded by Notice 2013–1 IRB 2013–3, and the appendix to Notice 2013–1 was superseded by Notice 2013–16 (IRB 2013–14), then Notice 2013–36, and then Notice 2013–55. However, an additional tribe has settled its case against the United States since the publication of Notice 2013–55, so we are seeking to publish an updated appendix to Notice 2013–1. This notice would supersede Notice 2013–55. Notice 2013–1 Appendix is modified and superseded.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

T.D. 9662

DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Part 31

Designation of Payor to Perform Acts Required of an Employer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under section 3504 of the Internal Revenue Code (Code) providing circumstances under which a person (payor) is designated to perform the acts required of an employer and is liable for employment taxes with respect to wages or compensation paid by the payor to individuals performing services for the payor's client pursuant to a service agreement between the payor and the client.

DATES: *Effective date:* These final regulations are effective on March 31, 2014.

Applicability date: For dates of applicability, see § 31.3504-2(f) of these regulations.

FOR FURTHER INFORMATION

CONTACT: Jeanne Royal Singley at (202) 317-6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31 under section 3504 of the Code. On January 29, 2013, Treasury and the IRS published a notice of proposed rulemaking (REG-102966-10, 78 FR 6056) (the proposed regulations) in the **Federal Register** under section 3504 of the Code. Treasury and the IRS received written and electronic comments responding to the proposed regulations. All comments were considered and are available for public inspection at <http://www.regulations.gov> or upon request. After consideration of all the

public comments, the proposed regulations are adopted as amended by this Treasury decision. The public comments and revisions are discussed in this preamble.

Explanation of Provisions

Under section 3504, if a payor pays wages or compensation to employees who are employed by one or more employers, the Secretary is authorized, in accordance with regulations prescribed by the Secretary, to designate such payor to perform acts required of employers under the Code. Section 3504 further provides that, except as otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable with respect to an employer are applicable to the payor so designated, but the employer for whom the payor acts remains subject to the provisions of law (including penalties) applicable with respect to employers. Accordingly, both an employer and the payor designated in accordance with regulations under section 3504 are liable for the employment taxes on wages or compensation paid by the payor.

The IRS has established administrative procedures under which a payor may request authorization on Form 2678, *Employer/Payer Appointment of Agent*, to file employment tax returns and perform other acts for the employer. The proposed regulations provide rules regarding the employment tax obligations under certain three-party arrangements in which a payor enters into an agreement with the employer (client) to perform the employment tax obligations of the client with regard to wages or compensation paid by the payor to individuals performing services for the client, but the payor does not use the established IRS administrative procedures to request authorization to file employment tax returns and performs other acts for the client.

Under the proposed regulations, a payor is designated under section 3504 to perform the acts of an employer in any case in which the payor enters into a service agreement with a client. For this purpose, the term *service agreement* means a written or oral agreement pursuant to

which the payor (1) asserts it is the employer (or "co-employer") of individuals performing services for the client, (2) pays wages or compensation to the individuals for services the individuals perform for the client, and (3) assumes responsibility to collect, report, and pay, or assumes liability for, any employment taxes with respect to the wages or compensation paid by the payor to the individuals who perform services for the client.

The proposed regulations also provide exceptions to when a payor is designated under section 3504 to perform the acts of an employer even if the payor has entered into an agreement that includes all of the components of a service agreement. The proposed regulations also include numerous examples to illustrate the rules regarding designation.

Summary of Comments and Explanation of Revisions

The IRS received comments in response to the proposed regulations. The majority of the comments expressed support for the regulations and had no suggested changes. Other comments were outside the scope of section 3504 and these regulations.

One commenter suggested deleting the term "agent" when describing the third party payor that is designated to perform the acts of an employer. The commenter indicated that many three-party arrangements are not structured as common law agency relationships and that designating the payor as an agent for purposes of these regulations may raise implications for other unrelated issues. While the proposed regulations state that the designation of a payor under the proposed regulations has no impact in determining the payor's status for other purposes of the Code, Treasury and the IRS agree that describing the payor designated to perform the acts of an employer as an "agent" may be unnecessary, given that section 3504 grants the Secretary authority to designate a "fiduciary, agent, or other person" to perform such acts. Accordingly, the final regulations adopt this change.

Another commenter asked for clarification of the application of section 3504 to payors of group disability income benefits under an administrative service contract (commonly referred to as an administrative service only agreement or an “ASO agreement”) with an employer. The comment was in response to a specific request in the notice of proposed rule-making asking whether the proposed definition of service agreement inappropriately designates or fails to designate a payor to perform acts of an employer. The commenter explained that under an ASO agreement, an insurer that administers employee disability claims may agree to withhold employment taxes on the taxable disability payments and report and pay the employment taxes to the IRS under the insurer’s employer identification number. The commenter stated that in recent years, some insurance companies have required that the employer designate the insurer as an agent on Form 2678 when entering into new ASO agreements. The commenter asked whether performing services under an ASO agreement makes the insurer an agent under section 3504 that is required to file Form 2678. The commenter also asked for an example to be included in these final regulations to clarify whether filing Form 2678 is required to perform employment tax obligations under an ASO agreement.

These regulations address the designation of a payor to perform the acts of an employer when the formal IRS administrative procedures to designate an agent (i.e., filing Form 2678) are not followed. Accordingly, it is beyond the scope of these regulations to address whether a Form 2678 must be filed in order to report and pay employment taxes in any particular situation.

However, § 32.1 of the Employment Tax Regulations provides specific rules for reporting employment taxes with respect to payments made by a third party on account of sickness or accident disability (often called “sick pay”). While those rules are unaffected by section 3504 or these regulations, Treasury and the IRS agree a clarification of the interaction of those rules and these regulations would be helpful.

Specifically, under § 32.1, a third-party payor of sick pay may be treated as an

employer or as an agent of the employer with regard to the employment tax obligations, depending on the circumstances of the arrangement. The proposed regulations contain an exception at § 31.3504–2(d)(3) that a payor is not designated to perform the acts required of an employer for any wages or compensation paid by the payor to the individual(s) performing services for a client if the payor is the employer. However, the proposed regulations are not clear whether the § 31.3504–2(d)(3) exception for payors that are employers applies if the third-party payor of the sick pay is *treated as* an employer under § 32.1. To clarify that a third-party payor of sick pay that is treated as an employer under § 32.1 will not be designated under these regulations to perform the acts of an employer with regard to the sick pay, these final regulations add an additional exception at § 31.3504–2(d)(4) for payors treated as employers under section 3121(a)(2)(A).

No changes were needed, however, to address situations where the third-party payor of the sick pay is the agent of the employer under § 32.1. Under those circumstances, these regulations do not apply because the payments are not made pursuant to a service agreement within the meaning of these regulations. The first component of a service agreement is that the payor asserts that it is the employer of the individuals performing services for its client, such as by filing employment tax returns using its own EIN that include wages paid to the individuals performing services for the client. A third-party payor of sick pay that is treated as an agent of the employer under § 32.1 does not file employment tax returns under its own EIN to report and pay the taxes on the sick pay or otherwise assert that it is the employer. Thus, the arrangement under which the payor pays the sick pay as an agent would not be a service agreement and these regulations would not apply to designate the payor to perform the acts of the employer.

Finally, although no comments were received with regard to the exception at § 31.3504–2(d)(3) for employers, these final regulations revise that provision to clarify that the exception includes a section 3401(d)(1) employer, also commonly referred to as a statutory employer, as dis-

cussed in the preamble to the proposed regulations. Section 3401(d)(1) provides that for purposes of federal income tax withholding, the term employer means the person for whom an individual performs or performed any service, of whatever nature, as an employee of such person, except that, if the person for whom the individual performs or performed the services does not have control of the payment of wages for such services, the term employer means the person having control of the payment of such wages. For purposes of section 3401(d)(1), the term control means legal control. See § 31.3401(d)–1(f). Thus, when one person is the common law employer of an individual because it controls the day-to-day performance of services by the individual, another person may be the employer liable to collect, report, and pay employment taxes because it is the entity solely in control of the payment of wages to the individual. See *Winstead v. United States*, 109 F.3d 989 (4th Cir. 1997). An example is added to these regulations at § 31.3504–2(e)(8) to demonstrate the application of the exception to a section 3401(d)(1) employer.

Special Analyses

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

Drafting Information

The principal author of these regulations is Jeanne Royal Singley, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, personnel from

other offices of the IRS and Treasury participated in their development.

* * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3504-2 is added to read as follows:

§ 31.3504-2 Designation of Payor to Perform Acts of an Employer

(a) *In general.* A person (as defined in section 7701(a)(1)) that pays wages or compensation (“payor”) to the individual(s) performing services for any client pursuant to a service agreement, except as provided in paragraph (d) of this section, is designated to perform the acts required of an employer with respect to the wages or compensation paid. For purposes of this section the term *wages* has the same meaning as the term *wages* has for purposes of chapters 21, 23, and 24, and the term *compensation* has the same meaning as the term *compensation* has for purposes of chapter 22. This section is not applicable if the payor has been authorized as an agent of the employer under § 31.3504-1.

(b) *Definitions*—(1) *Client.* The term *client* means an individual or entity that enters into a service agreement with the payor.

(2) *Service agreement.* (i) The term *service agreement* means an agreement pursuant to which the payor —

(A) Asserts it is the employer (or “co-employer”) of the individual(s) performing services for the client;

(B) Pays wages or compensation to the individual(s) for services the individual(s) perform for the client; and

(C) Assumes responsibility to collect, report, and pay, or assumes liability for, any taxes applicable under subtitle C of

the Code with respect to the wages or compensation paid by the payor to the individual(s) performing services for the client.

(ii) For purposes of paragraph (b)(2)(i)(A) of this section, the payor may implicitly or explicitly assert it is the employer (or “co-employer”) of the individual(s) performing services for the client, including by agreeing to—

(A) Recruit and hire employees for the client or assign employees as permanent or temporary members of the client’s work force, or participate with the client in these actions;

(B) Hire the client’s employees as its own and then provide them back to the client to perform services for the client; or

(C) File employment tax returns using its own employer identification number that include wages or compensation paid to the individual(s) performing services for the client.

(c) *Effects of designation.* If a payor is designated to perform the acts required of an employer under this section then the following rules apply—

(1) A payor must perform the acts required of an employer under each applicable chapter of the Code and the relevant regulations with respect to the wages or compensation paid by such payor. All provisions of law (including penalties) and the regulations applicable to the employer are applicable to the payor so designated with respect to the wages or compensation paid by the payor; and

(2) Each employer for whom the payor is designated remains subject to all provisions of law (including penalties) and of the regulations applicable to an employer.

(d) *Exceptions.* A payor is not designated to perform the acts required of an employer under this section for any wages or compensation paid by the payor to the individual(s) performing services for a client if—

(1) The wages or compensation are reported on a return filed under the client’s employer identification number (as defined in section 6109 and the applicable regulations);

(2) The payor is a common paymaster under sections 3121(s) or 3231(i);

(3) The payor is the employer of the individual(s) (including an employer within the meaning of section 3401(d)(1)); or

(4) The payor is treated as an employer under section 3121(a)(2)(A).

(e) *Examples.* The following examples illustrate the application of this section:

(1) *Example 1.* Corporation P enters into an agreement with Employer, effective January 1, 2015. Under the agreement, Corporation P hires the Employer’s employees as its own employees and provides them back to Employer to perform services for Employer. Corporation P also assumes responsibility to make payment of the individuals’ wages and for the collection, reporting, and payment of applicable taxes. For all pay periods in 2015, Employer provides Corporation P with an amount equal to the gross payroll (that is, wage and tax amounts) of the individuals, and Corporation P pays wages (less the applicable withholding) to the individuals performing services for Employer. Corporation P also reports the wage and tax amounts on Form 941, *Employer’s QUARTERLY Federal Tax Return*, filed for each quarter of 2015 under Corporation P’s employer identification number. Corporation P is not a common paymaster, the employer of the individuals (including an employer within the meaning of section 3401(d)(1)), or treated as the employer of the individual under section 3121(a)(2)(A). Corporation P is designated to perform the acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Employer and Corporation P are each subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(2) *Example 2.* Same facts as *Example 1*, except that Corporation P only reports the wage and tax amounts on Form 941, *Employer’s QUARTERLY Federal Tax Return*, filed for the 1st and 2nd quarters of 2015. Neither Corporation P nor Employer files returns for the 3rd and 4th quarters of 2015. Corporation P is designated to perform the acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Employer and Corporation P are each subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(3) *Example 3.* Same facts as *Example 1*, except that neither Corporation P nor Employer reports the wage and tax amounts on Form 941, *Employer’s QUARTERLY Federal Tax Return*, for any quarter of 2015. Corporation P is designated to perform the acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Employer and Corporation P are each subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(4) *Example 4.* Same facts as *Example 1*, except that Employer provides only net payroll (that is, wages less tax amounts) to Corporation P for each pay period. Corporation P is designated to perform the acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Employer and Corporation P are each subject to all provisions of law (including penalties) appli-

cable in respect of employers for all quarters of 2015 with respect to such wages.

(5) *Example 5.* Same facts as *Example 1*, except that after Corporation P reports the wage and tax amounts on Form 941, *Employer's QUARTERLY Federal Tax Return*, filed for each quarter of 2015 under Corporation P's employer identification number, Corporation P files a claim for refund of the employment taxes it paid for each quarter of 2015 that are related to wages Corporation P paid to the individuals performing services for Employer. The basis for Corporation P's refund claim is that Corporation P is not the employer of the individuals that performed services for Employer. Corporation P is designated to perform the acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Accordingly, Corporation P is not entitled to a refund. Employer and Corporation P are each subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(6) *Example 6.* Corporation S enters into an agreement with Employer, effective January 1, 2015. Under the agreement, Corporation S provides payroll services, including payment of wages to individuals performing services for Employer, and assumes responsibility for the collection, reporting, and payment of applicable taxes. For all pay periods in 2015, Employer provides Corporation S with an amount equal to the gross payroll (that is, wage and tax amounts) of the individuals, and Corporation S pays wages (less the applicable withholding) to the individuals performing services for Employer. Corporation S also reports the wage and tax amounts on Form 941, *Employer's QUARTERLY Federal Tax Return*, filed for each quarter of 2015 under Employer's employer identification number. Corporation S is not designated to perform the acts of an employer with respect to all of the wages Corporation S paid to the individuals performing services for Employer for all quarters of 2015. Corporation S did not assert it was the employer and filed Forms 941 using Employer's employer identification number. Accordingly, Corporation S is not liable for the applicable employment taxes under this section. Employer remains subject to all provisions of law (including

penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(7) *Example 7.* Corporation T enters into a consulting agreement with Manufacturer effective January 1, 2015, to provide consulting services to Manufacturer. Corporation T is responsible to pay wages to the individuals providing the consulting services to Manufacturer and to collect, report, and pay the applicable taxes. Corporation T has the right to direct and control the individuals as to when and how to perform the consulting services and, thus, is the common law employer of the individuals providing the consulting services. Corporation T is not designated to perform the acts of an employer with respect to all of the wages Corporation T pays to individuals providing consulting services to Manufacturer. However, as the common law employer of the individuals, Corporation T is subject to all provisions of law (including penalties) applicable in respect of employers with respect to such wages.

(8) *Example 8.* On January 1, 2015, Corporation U enters into an agreement with Employer for Employer to farm Corporation U's property. Under the agreement, Corporation U and Employer agree to split the proceeds of the sale of the products grown on the property. Employer hires workers to assist it with the farming. Employer has the right to direct and control the workers as to when and how to perform the services and, thus, is the common law employer of the workers. However, Employer is unable to pay the workers until after the products are sold. Therefore, Corporation U pays wages to the workers and deducts this amount from Employer's share of the profits. Corporation U controls the payment of wages within the meaning of section 3401(d)(1). Corporation U is not designated to perform the acts of an employer with respect to all of the wages Corporation U paid to workers providing services for Employer. However, as the section 3401(d)(1) employer of the workers performing services for Employer, Corporation U is subject to all provisions of law (including penalties) applicable in respect of employers with respect to such wages.

(9) *Example 9.* Corporation V and Employer execute and submit a Form 2678, *Employer/Payer Appointment of Agent*, to the Service, requesting approval to authorize Corporation V to report, deposit, and pay taxes with respect to wages it pays, as

agent of Employer for purposes of Form 941, *Employer's QUARTERLY Federal Tax Return*. The Form 2678 is approved by the Service and effective for all quarters of 2015. Accordingly, Corporation V reports the wages it pays to individuals performing services for Employer and related tax amounts on Form 941 and Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, filed for each quarter of 2015 under Corporation V's employer identification number. Corporation V is not designated under this section to perform the acts of an employer with respect to all of the wages Corporation V paid to the individuals performing services for Employer for all quarters of 2015. However, as an agent authorized under § 31.3504-1(a), Corporation V is subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages. Employer also remains subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(f) *Effective/applicability date.* These final regulations are effective for wages or compensation paid by a payor in quarters beginning on or after March 31, 2014.

John Dalrymple
*Deputy Commissioner for
Services and Enforcement.*

Approved February 14, 2014.

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

(Filed by the Office of the Federal Register on March 28, 2014, 8:45 a.m. and published in the issue of the Federal Register for March 31, 2014, 79 F.R. 17860)

Part III. Administrative, Procedural, and Miscellaneous

Postponement of Deadline for Making an Election to Deduct for the Preceding Taxable Year Losses Attributable to Colorado Severe Storms, Flooding, Landslides, and Mudslides

Notice 2014–20

PURPOSE

This Notice postpones until October 15, 2014, the deadline to make an election under § 165(i) of the Internal Revenue Code to deduct in the preceding taxable year losses attributable to damage from severe storms, flooding, landslides, and mudslides sustained in a federally declared disaster area in Colorado. This postponement is granted under § 7508A.

BACKGROUND

From September 11 through September 30, 2013, severe storms, flooding, landslides, and mudslides in Colorado (Colorado major flooding event) caused significant damage. The President of the United States issued major disaster and emergency declarations under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), for certain areas in Colorado. The Federal Emergency Management Agency (FEMA) determined certain areas within Colorado to be eligible for Public Assistance or Public Assistance and Individual Assistance under the Stafford Act.

Section 165(i) provides that if a taxpayer sustains a loss attributable to a federally declared disaster occurring in a disaster area, the taxpayer may elect to deduct that loss on the taxpayer's return for the taxable year immediately preceding the taxable year in which the disaster occurred. For purposes of § 165(i), a federally declared disaster is a disaster determined by the President to warrant assistance by the Federal Government under the Stafford Act (including a disaster for which the President issues a major disaster declaration or an emergency declara-

tion), and a disaster area is the area so determined to be eligible for such assistance. See § 165(h)(3)(C) and 42 U.S.C. § 5122.

Section 1.165–11(e) of the Income Tax Regulations requires a taxpayer to make the § 165(i) election by filing a return, an amended return, or a refund claim on or before the later of: (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time for filing the return) for the taxable year in which the disaster actually occurred; or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time for filing the return) for the immediately preceding taxable year. Section 1.165–11(e) provides that the return or claim should specify the date or dates of the disaster that gave rise to the loss, and the city, town, county, and State in which the property that was damaged or destroyed was located at the time of the disaster. In general, the election is irrevocable 90 days after the taxpayer makes the election.

Section 7508A provides the Secretary of the Treasury with authority to postpone the time for performing certain acts under the internal revenue laws for up to one year for a taxpayer affected by a federally declared disaster. Section 301.7508A–1(c)(1) of the Regulations on Procedure and Administration lists several specific acts performed by taxpayers for which § 7508A relief may apply, and § 301.7508A–1(c)(1)(vii) authorizes the IRS and Treasury Department to specify additional acts. Section 301.7508A–1(d)(1) describes several types of affected taxpayers eligible for relief under § 7508A. Section 301.7508A–1(d)(1)(ix) authorizes the IRS to determine that any other person is affected by a federally declared disaster and therefore eligible for relief. Under § 301.7508A–1(d)(2), the area of a federally declared disaster for which the IRS has determined that the postponement of one or more deadlines applies is referred to as a covered disaster area.

AFFECTED TAXPAYERS FOR WHICH THE SECTION 165(i) DEADLINE IS POSTPONED

Under the authority of § 7508A and §§ 301.7508A–1(c)(1)(vii) and 301.7508A–1(d)(1)(ix), the IRS has determined that the areas that FEMA has determined to be eligible for Public Assistance or Public Assistance and Individual Assistance pursuant to the major disaster and emergency declarations issued in response to the Colorado major flooding event are covered disaster areas. A list of those areas is available at the Federal Emergency Management Agency (FEMA) website at www.fema.gov/disaster.

Under the authority of § 301.7508A–1(d)(1)(ix), a taxpayer is an affected taxpayer to which the postponement of the deadline for making the § 165(i) election applies if: (1) the taxpayer sustained a loss attributable to the Colorado major flooding event; (2) the loss occurred in a covered disaster area for the Colorado major flooding event (regardless of whether the taxpayer's principal residence or principal place of business is in one of the covered disaster areas); and (3) the deadline for the taxpayer to make a § 165(i) election for that loss, but for this notice, would be before October 15, 2014.

Affected taxpayers for purposes of this notice are not affected taxpayers for purposes of other relief provided by the IRS unless the taxpayer separately qualifies as an affected taxpayer under other guidance issued by the IRS.

GRANT OF RELIEF

Under the authority of § 7508A, the IRS grants affected taxpayers, as defined above, a postponement to October 15, 2014, to make an election under § 165(i) for losses attributable to the Colorado major flooding event.

To assist the IRS in identifying affected taxpayers to ensure that they receive this postponement of the deadline to make the § 165(i) election, affected taxpayers should include a reference to this notice, Notice 2014–20, with their return, amended return, or refund claim on which they are making a postponed § 165(i) election pursuant to this notice. The return

or claim should also include the other information requested in § 1.165-11(e).

This notice is limited to making an election under § 165(i) and does not affect the application of any other section of the Code or the regulations.

DRAFTING INFORMATION

The principal author of this notice is Daniel A. Cassano of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Cassano on (202) 317-7011 (not a toll-free number).

IRS Virtual Currency Guidance

Notice 2014-21

SECTION 1. PURPOSE

This notice describes how existing general tax principles apply to transactions using virtual currency. The notice provides this guidance in the form of answers to frequently asked questions.

SECTION 2. BACKGROUND

The Internal Revenue Service (IRS) is aware that “virtual currency” may be used to pay for goods or services, or held for investment. Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like “real” currency — i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance—but it does not have legal tender status in any jurisdiction.

Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as “convertible” virtual currency. Bitcoin is one example of a convertible virtual currency. Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies. For a more comprehensive description of convertible virtual currencies to date, see Financial Crimes Enforcement Network

(FinCEN) *Guidance on the Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies* (FIN-2013-G001, March 18, 2013).

SECTION 3. SCOPE

In general, the sale or exchange of convertible virtual currency, or the use of convertible virtual currency to pay for goods or services in a real-world economy transaction, has tax consequences that may result in a tax liability. This notice addresses only the U.S. federal tax consequences of transactions in, or transactions that use, convertible virtual currency, and the term “virtual currency” as used in Section 4 refers only to convertible virtual currency. No inference should be drawn with respect to virtual currencies not described in this notice.

The Treasury Department and the IRS recognize that there may be other questions regarding the tax consequences of virtual currency not addressed in this notice that warrant consideration. Therefore, the Treasury Department and the IRS request comments from the public regarding other types or aspects of virtual currency transactions that should be addressed in future guidance.

Comments should be addressed to:

Internal Revenue Service
Attn: CC:PA:LDP:PR (Notice 2014-21)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand delivered Monday through Friday between the hours of 8 A.M. and 4 P.M. to:

Courier’s Desk
Internal Revenue Service
Attn: CC:PA:LDP:PR (Notice 2014-21)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, taxpayers may submit comments electronically via e-mail to the following address: Notice.Comments@irscounsel.treas.gov. Taxpayers should include “Notice 2014-21” in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

For purposes of the FAQs in this notice, the taxpayer’s functional currency is

assumed to be the U.S. dollar, the taxpayer is assumed to use the cash receipts and disbursements method of accounting and the taxpayer is assumed not to be under common control with any other party to a transaction.

SECTION 4. FREQUENTLY ASKED QUESTIONS

Q-1: How is virtual currency treated for federal tax purposes?

A-1: For federal tax purposes, virtual currency is treated as property. General tax principles applicable to property transactions apply to transactions using virtual currency.

Q-2: Is virtual currency treated as currency for purposes of determining whether a transaction results in foreign currency gain or loss under U.S. federal tax laws?

A-2: No. Under currently applicable law, virtual currency is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes.

Q-3: Must a taxpayer who receives virtual currency as payment for goods or services include in computing gross income the fair market value of the virtual currency?

A-3: Yes. A taxpayer who receives virtual currency as payment for goods or services must, in computing gross income, include the fair market value of the virtual currency, measured in U.S. dollars, as of the date that the virtual currency was received. See Publication 525, *Taxable and Nontaxable Income*, for more information on miscellaneous income from exchanges involving property or services.

Q-4: What is the basis of virtual currency received as payment for goods or services in Q&A-3?

A-4: The basis of virtual currency that a taxpayer receives as payment for goods or services in Q&A-3 is the fair market value of the virtual currency in U.S. dollars as of the date of receipt. See Publication 551, *Basis of Assets*, for more information on the computation of basis when property is received for goods or services.

Q-5: How is the fair market value of virtual currency determined?

A-5: For U.S. tax purposes, transactions using virtual currency must be reported in U.S. dollars. Therefore, taxpayers will be required to determine the fair

market value of virtual currency in U.S. dollars as of the date of payment or receipt. If a virtual currency is listed on an exchange and the exchange rate is established by market supply and demand, the fair market value of the virtual currency is determined by converting the virtual currency into U.S. dollars (or into another real currency which in turn can be converted into U.S. dollars) at the exchange rate, in a reasonable manner that is consistently applied.

Q-6: Does a taxpayer have gain or loss upon an exchange of virtual currency for other property?

A-6: Yes. If the fair market value of property received in exchange for virtual currency exceeds the taxpayer's adjusted basis of the virtual currency, the taxpayer has taxable gain. The taxpayer has a loss if the fair market value of the property received is less than the adjusted basis of the virtual currency. See Publication 544, *Sales and Other Dispositions of Assets*, for information about the tax treatment of sales and exchanges, such as whether a loss is deductible.

Q-7: What type of gain or loss does a taxpayer realize on the sale or exchange of virtual currency?

A-7: The character of the gain or loss generally depends on whether the virtual currency is a capital asset in the hands of the taxpayer. A taxpayer generally realizes capital gain or loss on the sale or exchange of virtual currency that is a capital asset in the hands of the taxpayer. For example, stocks, bonds, and other investment property are generally capital assets. A taxpayer generally realizes ordinary gain or loss on the sale or exchange of virtual currency that is not a capital asset in the hands of the taxpayer. Inventory and other property held mainly for sale to customers in a trade or business are examples of property that is not a capital asset. See Publication 544 for more information about capital assets and the character of gain or loss.

Q-8: Does a taxpayer who "mines" virtual currency (for example, uses computer resources to validate Bitcoin transactions and maintain the public Bitcoin transaction ledger) realize gross income upon receipt of the virtual currency resulting from those activities?

A-8: Yes, when a taxpayer successfully "mines" virtual currency, the fair market value of the virtual currency as of the date of receipt is includible in gross income. See Publication 525, *Taxable and Nontaxable Income*, for more information on taxable income.

Q-9: Is an individual who "mines" virtual currency as a trade or business subject to self-employment tax on the income derived from those activities?

A-9: If a taxpayer's "mining" of virtual currency constitutes a trade or business, and the "mining" activity is not undertaken by the taxpayer as an employee, the net earnings from self-employment (generally, gross income derived from carrying on a trade or business less allowable deductions) resulting from those activities constitute self-employment income and are subject to the self-employment tax. See Chapter 10 of Publication 334, *Tax Guide for Small Business*, for more information on self-employment tax and Publication 535, *Business Expenses*, for more information on determining whether expenses are from a business activity carried on to make a profit.

Q-10: Does virtual currency received by an independent contractor for performing services constitute self-employment income?

A-10: Yes. Generally, self-employment income includes all gross income derived by an individual from any trade or business carried on by the individual as other than an employee. Consequently, the fair market value of virtual currency received for services performed as an independent contractor, measured in U.S. dollars as of the date of receipt, constitutes self-employment income and is subject to the self-employment tax. See FS-2007-18, April 2007, *Business or Hobby? Answer Has Implications for Deductions*, for information on determining whether an activity is a business or a hobby.

Q-11: Does virtual currency paid by an employer as remuneration for services constitute wages for employment tax purposes?

A-11: Yes. Generally, the medium in which remuneration for services is paid is immaterial to the determination of whether the remuneration constitutes

wages for employment tax purposes. Consequently, the fair market value of virtual currency paid as wages is subject to federal income tax withholding, Federal Insurance Contributions Act (FICA) tax, and Federal Unemployment Tax Act (FUTA) tax and must be reported on Form W-2, *Wage and Tax Statement*. See Publication 15 (Circular E), *Employer's Tax Guide*, for information on the withholding, depositing, reporting, and paying of employment taxes.

Q-12: Is a payment made using virtual currency subject to information reporting?

A-12: A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property. For example, a person who in the course of a trade or business makes a payment of fixed and determinable income using virtual currency with a value of \$600 or more to a U.S. non-exempt recipient in a taxable year is required to report the payment to the IRS and to the payee. Examples of payments of fixed and determinable income include rent, salaries, wages, premiums, annuities, and compensation.

Q-13: Is a person who in the course of a trade or business makes a payment using virtual currency worth \$600 or more to an independent contractor for performing services required to file an information return with the IRS?

A-13: Generally, a person who in the course of a trade or business makes a payment of \$600 or more in a taxable year to an independent contractor for the performance of services is required to report that payment to the IRS and to the payee on Form 1099-MISC, *Miscellaneous Income*. Payments of virtual currency required to be reported on Form 1099-MISC should be reported using the fair market value of the virtual currency in U.S. dollars as of the date of payment. The payment recipient may have income even if the recipient does not receive a Form 1099-MISC. See the Instructions to Form 1099-MISC and the General Instructions for Certain Information Returns for more information. For payments to non-U.S. persons, see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

Q-14: Are payments made using virtual currency subject to backup withholding?

A-14: Payments made using virtual currency are subject to backup withholding to the same extent as other payments made in property. Therefore, payors making reportable payments using virtual currency must solicit a taxpayer identification number (TIN) from the payee. The payor must backup withhold from the payment if a TIN is not obtained prior to payment or if the payor receives notification from the IRS that backup withholding is required. See Publication 1281, *Backup Withholding for Missing and Incorrect Name/TINs*, for more information.

Q-15: Are there IRS information reporting requirements for a person who settles payments made in virtual currency on behalf of merchants that accept virtual currency from their customers?

A-15: Yes, if certain requirements are met. In general, a third party that contracts with a substantial number of unrelated merchants to settle payments between the merchants and their customers is a third party settlement organization (TPSO). A TPSO is required to report payments made to a merchant on a Form 1099-K, *Payment Card and Third Party Network Transactions*, if, for the calendar year, both (1) the number of transactions settled for the merchant exceeds 200, and (2) the gross amount of payments made to the merchant exceeds \$20,000. When completing Boxes 1, 3, and 5a-1 on the Form 1099-K, transactions where the TPSO settles payments made with virtual currency are aggregated with transactions where the TPSO settles payments made with real currency to determine the total amounts to be reported in those boxes.

When determining whether the transactions are reportable, the value of the virtual currency is the fair market value of the virtual currency in U.S. dollars on the date of payment.

See The Third Party Information Reporting Center, <http://www.irs.gov/Tax-Professionals/Third-Party-Reporting-Information-Center>, for more information on reporting transactions on Form 1099-K.

Q-16: Will taxpayers be subject to penalties for having treated a virtual currency transaction in a manner that is inconsistent with this notice prior to March 25, 2014?

A-16: Taxpayers may be subject to penalties for failure to comply with tax laws. For example, underpayments attributable to virtual currency transactions may be subject to penalties, such as accuracy-related penalties under section 6662. In addition, failure to timely or correctly report virtual currency transactions when required to do so may be subject to information reporting penalties under section 6721 and 6722. However, penalty relief may be available to taxpayers and persons required to file an information return who are able to establish that the underpayment or failure to properly file information returns is due to reasonable cause.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Keith A. Aqui of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information about income tax issues addressed in this notice, please contact Mr. Aqui at (202) 317-4718; for further information about employment tax issues addressed in this notice, please contact Mr. Neil D. Shepherd

at (202) 317-4774; for further information about information reporting issues addressed in this notice, please contact Ms. Adrienne E. Griffin at (202) 317-6845; and for further information regarding foreign currency issues addressed in this notice, please contact Mr. Raymond J. Stahl at (202) 317-6938. These are not toll-free numbers.

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

Notice 2014-22

BACKGROUND

Notice 2013-1, 2013-3 IRB 281, provides guidance on the federal tax treatment of per capita payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes. Additional tribes have settled tribal trust cases against the United States since publication of Notice 2013-1. This notice provides an updated Appendix that reflects the additional settlement agreements.

EFFECT ON OTHER DOCUMENTS

Notice 2013-1 Appendix is modified and superseded.

FURTHER INFORMATION

For further information regarding this notice, please contact Telly Meier at phone number (202) 317-8494 (not a toll-free number).

**Appendix
Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases**

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy's Reservation
7. Coeur d'Alene Tribe
8. Confederated Salish and Kootenai Tribes

9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona
17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation
23. Mescalero Apache Tribe
24. Minnesota Chippewa Tribe
25. Nez Perce Tribe
26. Nooksack Indian Tribe
27. Northern Cheyenne Tribe of Indians
28. Omaha Tribe of Nebraska
29. Passamaquoddy Tribe of Maine
30. Pawnee Nation
31. Prairie Band of Potawatomi Nation
32. Pueblo of Zia
33. Quechan Tribe of the Fort Yuma Reservation
34. Red Cliff Band of Lake Superior Chippewa Indians
35. Rincon Luiseño Band of Indians
36. Rosebud Sioux Tribe
37. Round Valley Indian Tribes
38. Salt River Pima-Maricopa Indian Community
39. Santee Sioux Tribe of Nebraska
40. Sault Ste. Marie Tribe
41. Shoshone-Bannock Tribes of the Fort Hall Reservation
42. Soboba Band of Luiseno Indians
43. Spirit Lake Dakota Nation
44. Spokane Tribe of Indians
45. Standing Rock Sioux Tribe
46. Stillaguamish Tribe of Indians
47. Summit Lake Paiute Tribe
48. Swinomish Indian Tribal Community
49. Te-Moak Tribe of Western Shoshone Indians
50. Tohono O'odham Nation
51. Tulalip Tribes
52. Tule River Indian Tribe
53. Ute Indian Tribe of the Uintah and Ouray Reservation
54. Ute Mountain Ute Tribe
55. Winnebago Tribe of Nebraska
56. Qawalangin Tribe of Unalaska
57. Tlingit & Haida Tribes of Alaska
58. Northwestern Band of Shoshone Indians
59. Hoopa Valley Tribe
60. Ak-Chin Indian Community
61. Oglala Sioux Tribe
62. Yoruk Tribe
63. Cheyenne River Sioux Tribe
64. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony
65. Seminole Nation of Oklahoma

- 66. Otoe-Missouria Tribe of Oklahoma
- 67. Samish Indian Nation
- 68. Tonkawa Tribe of Indians of Oklahoma
- 69. Yakama Nation
- 70. Miami Tribe of Oklahoma
- 71. Shoshone Indian Tribe of the Wind River Reservation

Eligibility for Premium Tax Credit for Victims of Domestic Abuse

Notice 2014-23

PURPOSE

This notice provides guidance on circumstances in which a victim of domestic abuse who is married within the meaning of § 7703 of the Internal Revenue Code and is unable to file a joint tax return may claim a premium tax credit under § 36B.

BACKGROUND

Beginning in 2014, eligible individuals who purchase coverage under a qualified health plan through an Affordable Insurance Exchange are allowed a premium tax credit under § 36B. To be eligible for a premium tax credit, an individual must be an applicable taxpayer. Section 36B(c)(1) provides that an applicable taxpayer is a taxpayer (1) with household income for the taxable year between 100 percent and 400 percent of the federal poverty line for the taxpayer's family size, (2) who may not be claimed as a dependent by another taxpayer, and (3) who files a joint tax return if married (within the meaning of § 7703).

For victims of domestic abuse, contacting a spouse for purposes of filing a joint return may pose a risk of injury or trauma or, if the spouse is subject to a restraining order, may be legally prohibited. Section 7703(b) allows certain married individuals to be considered not married for purposes of the Internal Revenue Code. Under § 7703(b), a married taxpayer who lives apart from the taxpayer's spouse for the last six months of the taxable year is considered unmarried if he or she files a separate return, maintains as the taxpayer's home a household that is also the

principal place of abode of a dependent child for more than half the year, and furnishes over half the cost of the household during the taxable year. However, § 7703(b) does not apply to many individuals who are victims of domestic abuse. For example, the abuse may have occurred in the last six months of the taxable year, the victim may not have the financial means to furnish over half the cost of a household, or the victim may not have a dependent child. Consequently, the preamble to final regulations under § 36B, issued in June of 2012, provided that Treasury and the IRS would propose regulations addressing domestic abuse and similar circumstances that create obstacles to filing a joint return. The regulations also requested comments on how to structure a rule to address such situations, including the types of documentation a taxpayer might provide to establish eligibility for the rule and the need for appropriate safeguards. The Treasury Department and IRS have received numerous comments on this subject and intend to release proposed regulations addressing this issue.

RULE FOR 2014

For calendar year 2014, a married taxpayer will satisfy the joint filing requirement of § 36B(c)(1)(C) if the taxpayer files a 2014 tax return using a filing status of married filing separately and the taxpayer (i) is living apart from the individual's spouse at the time the taxpayer files his or her tax return, (ii) is unable to file a joint return because the taxpayer is a victim of domestic abuse, and (iii) indicates on his or her 2014 income tax return in accordance with the relevant instructions that the taxpayer meets the criteria under (i) and (ii). The proposed regulations will incorporate this rule for 2014.

CONTACT INFORMATION

For further information regarding this notice, please contact Steve Toomey, Shaheen Pflanz or Arvind Ravichandran at (202) 317-4718 (not a toll-free number).

Health Insurance Providers Fee; Procedural and Administrative Guidance

Notice 2014-24

SECTION 1. PURPOSE

This notice provides a temporary safe harbor for covered entities that report direct premiums written for expatriate plans on a Supplemental Health Care Exhibit (SHCE). A covered entity may apply this temporary safe harbor for purposes of reporting direct premiums written on Form 8963, *Report of Health Insurance Provider Information*, which is used to calculate the fee imposed by § 9010 of the Affordable Care Act.

SECTION 2. BACKGROUND

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA), imposes an annual fee on covered entities engaged in the business of providing health insurance for United States health risks. The fee is a fixed amount allocated among all covered entities in proportion to their relative market share as determined by each entity's net premiums written for the data year, which is the year immediately preceding

the year in which the fee is paid (the year in which the fee is paid is the fee year).

Section 9010(b)(3) requires the Secretary of the Treasury (Secretary) to calculate the amount of each covered entity's annual fee. For this purpose, § 9010(g)(1) requires each covered entity to report to the Secretary its net premiums written for health insurance for any United States health risk for the data year. Section 9010(d) defines United States health risk to mean a health risk of any individual who is: (1) a United States citizen; (2) a resident of the United States (within the meaning of § 7701(b)(1)(A)); or (3) located in the United States, during the period such individual is so located.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) proposed the Health Insurance Provider Fee regulations (REG-118315-12, 78 FR 14034) on March 4, 2013, and issued final regulations (T.D. 9643, 78 FR 71476) on November 26, 2013, providing guidance regarding the § 9010 fee. The regulations require each covered entity to annually report its net premiums written for health insurance of United States health risks during the data year to the IRS by April 15th of the fee year on Form 8963, Report of Health Insurance Provider Information. For covered entities that file the SHCE with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus medical loss ratio (MLR) rebates with respect to the data year, subject to any applicable exclusions under § 9010. Form 8963 accordingly requires reporting of direct premiums written for purposes of determining net premiums written.

The regulations do not provide specific rules for expatriate policies. The MLR final rule issued by HHS (MLR final rule) defines expatriate policies as group health insurance policies that provide coverage to employees, substantially all of whom are: (1) working outside their country of citizenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country. 45 CFR 158.120(d)(4).

The SHCE includes separate reporting for expatriate plans, which are defined by

reference to the definition of expatriate policies in the MLR final rule. Section 57.4(b)(2) of the final regulations provides that the entire amount reported as direct premiums written on the SHCE (including direct premiums written for expatriate plans) will be considered to be for United States health risks unless the covered entity can demonstrate otherwise.

The preamble to the final regulations notes that commenters expressed concern regarding the application of this presumption to expatriate policies. The preamble explains that Treasury and the IRS considered methods for a covered entity to account for its expatriate policies, but did not identify a method that would be verifiable and administrable. Treasury and the IRS are continuing to examine this issue.

Section 6055 and the regulations thereunder require every person that provides minimum essential coverage (as defined in § 5000A(f)) to an individual to report to the IRS information about the coverage, including the name, address, and taxpayer identification number (TIN) of each individual covered under the policy. The data collected pursuant to § 6055 ultimately could provide insurers with information they need to determine more precisely the health risks covered by their expatriate plans. Notice 2013-45, 2013-1 IRB 116, however, delays the reporting required under § 6055 until 2016 for coverage in 2015.

In the interim, this notice provides a temporary safe harbor for 2014 and 2015 for a covered entity that reports direct premiums written for expatriate plans on its SHCE that include coverage of at least one non-United States health risk.

SECTION 3. TEMPORARY SAFE HARBOR

Treasury and the IRS have received comments providing general data regarding expatriate plans. While the data is not exhaustive, based on an analysis of that data, Treasury and the IRS are providing a temporary safe harbor that will allow a covered entity to treat 50% of certain premiums written for expatriate plans as being attributable to non-United States health risks. Because information collected pursuant to § 6055 could provide more detailed information on the health risks covered by these plans, this safe

harbor only applies for fee years 2014 and 2015.

.01 Temporary Safe Harbor Method.

A covered entity that satisfies the requirements of § 3.02 will be considered to have rebutted the presumption in § 57.4(b)(2) that the entire amount of direct premiums written reported on its SHCE is for United States health risks. In that event, the covered entity may, for fee years 2014 and 2015, treat 50% of the aggregate dollar amount of its direct premiums written for expatriate plans as reported on its SHCE (including the amounts for all members of the covered entity's controlled group, if applicable) as direct premiums written for health risks that are not United States health risks and may exclude this amount in reporting direct premiums written on Form 8963.

.02 Temporary Safe Harbor Requirements.

(1) The covered entity (including controlled group members, if any) files one or more SHCEs with the NAIC reporting direct premiums written for expatriate plans (defined by reference to the definition of expatriate policies in the MLR final rule, which is used for purposes of the SHCE).

(2) The covered entity's aggregate direct premiums written for expatriate plans reported on its SHCE(s) include coverage of at least one non-United States health risk.

(3) The covered entity (or designated entity, in the case of a controlled group) attaches a statement to its Form 8963, *Report of Health Insurance Provider Information*, certifying the information described in § 3.03.

.03 Temporary Safe Harbor Certification.

A covered entity using the temporary safe harbor must certify the following in a statement described in § 3.02(3):

(1) The covered entity's aggregate direct premiums written for expatriate plans reported on its SHCE(s) include coverage of at least one non-United States health risk.

(2) The covered entity is relying on the temporary safe harbor provided in Section 3 of Notice 2014-24.

(3) The aggregate dollar amount of direct premiums written for expatriate plans reported on its SHCE(s) for that covered entity (including the amounts for all members of the controlled group, if applicable).

(4) The covered entity has excluded 50% of this aggregate amount in determining the amount of direct premiums reported on Form 8963 pursuant to Section 3.01 of Notice 2014-24.

(5) *Example.*

Company X, the designated entity of a controlled group, and X's controlled group members (collectively, X Group) reported \$1 million in direct premiums written for expatriate plans, in the aggregate, on their SHCEs for 2014. X Group determines that at least one of its expatriate plans covers at least one non-United States health risk. X Group intends to use the temporary safe harbor described in this notice for purposes of reporting on Form 8963. For the 2014 fee year, Company X may reduce the amount of direct premiums written reported for X Group on Form 8963 by \$500,000 provided it attaches the following statement to its Form 8963:

Company X hereby declares that:

(1) the aggregate direct premiums written for expatriate plans reported on the X Group SHCEs for 2014 include coverage of at least one non-United States health risk; (2) X Group is relying on the temporary safe harbor provided in Section 3 of Notice 2014-24; (3) X Group reported an aggregate of \$1,000,000 in direct premiums written for expatriate plans on its 2014 SHCEs; and (4) X Group excluded 50% of this amount, or \$500,000, in determining the aggregate amount of direct premiums written for all X Group members reported on Form 8963.

SECTION 4. EFFECTIVE/APPLICABILITY DATES

This notice is effective March 28, 2014 and applies only to fee years 2014 and 2015.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Charles J. Langley, Jr. of the Office of

Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Mr. Langley at (202) 317-6855 (not a toll-free number).

Rev. Proc. 2014-28

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2013-22, 2013-18 I.R.B. 985, which sets forth the procedures of the Internal Revenue Service (Service) for issuing opinion and advisory letters for § 403(b) pre-approved plans (that is, § 403(b) prototype plans and § 403(b) volume submitter plans). Under the program established by Rev. Proc. 2013-22, as modified by this revenue procedure, the Service will accept applications for opinion and advisory letters regarding the acceptability under § 403(b) of the Internal Revenue Code of the form of prototype plans and volume submitter plans, respectively, through April 30, 2015. This revenue procedure also makes certain modifications to the program established by Rev. Proc. 2013-22 that are intended to allow more plan sponsors and eligible employers to participate in the § 403(b) pre-approved plan program. The appendix to Rev. Proc. 2013-22 is revised accordingly.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2013-22 established a new program for the submission of § 403(b) pre-approved plans to the Service, modeled after the program for pre-approved § 401(a) qualified plans, which is described in Rev. Proc. 2011-49, 2011-44 I.R.B. 608.

.02 The Service has received comments from pre-approved plan sponsors requesting that the § 403(b) pre-approved plan program be modified to reflect the differing needs of plan sponsors of § 401(a) qualified plans and § 403(b) plans, and to extend the deadline to submit applications to the Service under the § 403(b) pre-approved plan program.

SECTION 3. MODIFICATION OF REV. PROC. 2013-22

After evaluation and consideration of comments from pre-approved plan sponsors,

the Service makes the following changes to Rev. Proc. 2013-22:

.01 Sections 11.01 and 11.02, which required that, to qualify as a § 403(b) pre-approved plan sponsor, a person must expect at least 30 eligible employers to adopt its § 403(b) prototype plan basic plan document(s) or § 403(b) volume submitter specimen plan(s), as applicable, are modified to reduce the required number of eligible employers to 15.

.02 Section 11.03, which required that, to qualify as a mass submitter, a person must submit opinion or advisory letter applications on behalf of at least 30 prototype sponsors, or 30 volume submitters, respectively, each of which is sponsoring, on a word-for-word identical basis, the same basic plan document or specimen plan, is modified to reduce the required number of prototype sponsors or volume submitters, as applicable, to 15. Section 11.03 is also modified to allow a person to sponsor a plan as a minor modifier of a § 403(b) volume submitter specimen plan of a mass submitter under the same conditions listed in section 11.03 for a person sponsoring a plan as a minor modifier of a § 403(b) prototype plan of a mass submitter.

.03 Section 17.03, which allowed an application for an advisory letter for a § 403(b) volume submitter specimen plan to be filed by a volume submitter practitioner, by a mass submitter with respect to its mass submitter plan, or by a mass submitter on behalf of a word-for-word identical adopter of the mass submitter's plan, is modified to also allow an application for an advisory letter for a § 403(b) volume submitter specimen plan to be filed by a mass submitter on behalf of a minor modifier of the mass submitter's plan.

.04 Section 17.04, which required that a mass submitter's initial submission under the § 403(b) pre-approved plan program be accompanied by the applications for opinion or advisory letters filed on behalf of at least 30 word-for-word identical adopters of the basic plan document or specimen plan, as applicable, unless the mass submitter had already satisfied this requirement in connection with a previous application under Rev. Proc. 2013-22 involving another basic plan document or specimen plan, as applicable, is modified to reduce the required number of accom-

panying applications for opinion or advisory letters to 15. Section 17.04 is also modified to permit a mass submitter to submit additional applications on behalf of other pre-approved plan sponsors as minor modifiers of a § 403(b) volume submitter specimen plan of the mass submitter after the 15 word-for-word identical adopter requirement has been met.

.05 The deadline specified in section 21.04 of Rev. Proc. 2013–22 to submit § 403(b) pre-approved plans to the Service for opinion and advisory letters is extended to April 30, 2015.

.06 The Appendix to Rev. Proc. 2013–22 is amended by revising lines 4,

12, 13 and 16 thereof and, as amended, is attached is to this revenue procedure.

SECTION 4. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1520.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2013–22 is modified.

SECTION 6. EFFECTIVE DATE

The modification in this revenue procedure is effective as of April 14, 2014.

DRAFTING INFORMATION

The principal author of this revenue procedure is Eric Slack of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact Mr. Slack via e-mail at *RetirementPlanQuestions@irs.gov*.

APPENDIX

Application for Approval of § 403(b) Pre-approved Plan

1. Enter amount of user fee submitted: \$
2. Name of applicant:
 - a. EIN:
 - b. Address:
 - c. Phone:
3. Person to contact:
 - a. Phone:
 - b. Email address:
 - c. Power of attorney attached?
4. Type of applicant (check one):
 - a. Prototype sponsor
 - b. Prototype mass submitter
 - c. Volume submitter practitioner
 - d. Volume submitter mass submitter
 - e. Identical adopter of mass submitter plan
 - f. Minor modifier of mass submitter plan
5. Form of plan (check one);
 - a. Prototype plan
 - b. Volume submitter specimen plan without adoption agreement
 - c. Volume submitter specimen plan with adoption agreement
6. If the plan is a prototype plan, indicate whether the plan is a (check one):
 - a. Standardized plan
 - b. Nonstandardized plan
- 7.a. Prototype plan basic plan document number (Each of the prototype sponsor's or prototype mass submitter's basic plan documents must be assigned a 2-digit number, starting with 01. Enter the number you have assigned to the basic plan document that is associated with the adoption agreement for which this application is filed.):
- 7.b. Prototype plan adoption agreement number (Each different adoption agreement associated with a single basic plan document must be assigned a 3-digit number, beginning with 001. Enter the number you have assigned to the adoption agreement for which this application is filed.):
- 7.c. Volume submitter specimen plan number (Each of the volume submitter practitioner's or volume submitter mass submitter's specimen plans must be assigned a 2-digit number, starting with 01. Enter the number you have assigned to the specimen plan for which this application is filed.):
- 7.d. Volume submitter plan adoption agreement number, if applicable (Each different adoption agreement associated with a single specimen plan must be assigned a 3-digit number, beginning with 001. Enter the number you have assigned to the adoption agreement for which this application is filed.):
8. If 4.e. or 4.f. is checked, complete the following information for the mass submitter's plan on which this application is based, to the extent the information is available when this application is filed:
 - a. Name of mass submitter:
 - b. File folder number:
 - c. Letter serial number:
 - d. Date of letter:
 - e. Basic plan document number or specimen plan number (if b, c, and d not available):
 - f. Adoption agreement number, if applicable (if b, c, and d not available)
9. Investment arrangement(s) permitted under the prototype or specimen plan:
 - a. Annuity contracts issued by an insurance company
 - b. Custodial accounts
 - c. Retirement income accounts
10. Type(s) of contributions permitted under the prototype or specimen plan:
 - a. Elective deferrals (other than Roth)

- _____ b. Roth elective deferrals
- _____ c. After-tax employee contributions
- _____ d. Matching contributions
- _____ e. Other nonelective employer contributions

11. Are the following documents included with the application:

- a. Basic plan document or specimen plan?
- b. Adoption agreement (if the application is for a prototype plan or for a specimen plan that uses an adoption agreement)?

12. If 4.a. or 4.c. is checked, do you expect at least 15 eligible employers to adopt your § 403(b) prototype plan basic plan documents(s) or volume submitter specimen plan(s)?

13. If 4.b. or 4.d. is checked, are applications on behalf of at least 15 prototype sponsors or volume submitters who are sponsoring the identical basic plan document or specimen plan included with this application?

14. If the answer to 13 is “no,” enter the number of the basic plan document or specimen plan for which the requirement described in 13 is met:

15. Applicant’s signature under penalties of perjury (required if 4a, b, c, or d checked):

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signature: _____ Title: _____ Date: _____

16. Prototype sponsor’s or volume submitter’s and mass submitter’s signatures under penalties of perjury (required if 4e or 4f checked):

Under penalties of perjury, I declare that the prototype sponsor or volume submitter practitioner identified in line 2 of this application has adopted a prototype plan or a specimen plan that is identical to the mass submitter plan identified in line 7, or is a minor modifier of the mass submitter plan identified in line 7.

Prototype sponsor’s or volume submitter’s signature:

Title: _____ Date: _____

Mass submitter’s signature:

Title: _____ Date: _____

Part IV. Items of General Interest

Announcement and Reporting Advance Pricing Agreements

Announcement 2014–14

March 27, 2014

This Announcement is issued pursuant to § 521(b) of Pub. L. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement (APMA) Program, formerly known as the Advance Pricing Agreement (APA) Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year 2000 through 2012. This fifteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2013. It does not provide guidance regarding the application of the arm’s length standard.

During 2013, the APMA Program continued to benefit from the merger and processing efficiencies that began in 2012. For the second year in a row, the number of executed APAs increased (from 140 in 2012 to 145 in 2013). The median completion time fell from 39.8 months in 2012 to 32.7 months in 2013. The increase in efficiency is further illustrated by the fact that the number of executed APAs (145) again surpassed the number of applications filed (111).

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data for 2013; and Part III includes general descriptions of various elements of the APAs executed in 2013, including types of transactions covered, transfer pricing methods used, and completion time.

Calendar year 2013 provided many challenges to the leadership and staff of the APMA Program, but as illustrated below, the APMA Program has achieved many of its goals for 2013. The APMA Program expects to continue its progress in the years to come.

Richard J. McAlonan, Jr.
Director, Advance Pricing and Mutual Agreement Program

Part I. The APMA Program – Structure, Composition, and Operation
[Pub. L. 106–170 § 521(b)(2)(A)]

In February of 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations, Large Business and International Division of the IRS (TPO) and combined with the United States Competent Authority (USCA) staff responsible for transfer pricing cases, thereby forming the Advance Pricing and Mutual Agreement (APMA) Program. The APMA Program Director, Richard McAlonan, joined the Program in May of 2012.

After the formation of the APMA Program, the team that developed the IRS position in a bilateral or multilateral case and finalized the APA with the taxpayer also became responsible for discussing the case and obtaining an agreement with the treaty partner. This compression of functions into a single APA team has helped to eliminate inefficiencies and decreased the amount of time it takes to reach resolution once a case is set for discussion with the treaty partner.

As of the date of this report, the APMA Program is comprised of 55 team leaders, 26 economists, and 10 senior managers organized in 10 groups (7 team leader groups and 3 economist groups). The team leader groups are organized by country with each group having responsibility for multiple countries. Because of the large volume of cases with certain treaty partners, some countries are the responsibility of more than one group. The APMA Program's main office is located in Washington, DC, and it also has a significant presence in San Francisco and the Los Angeles area.

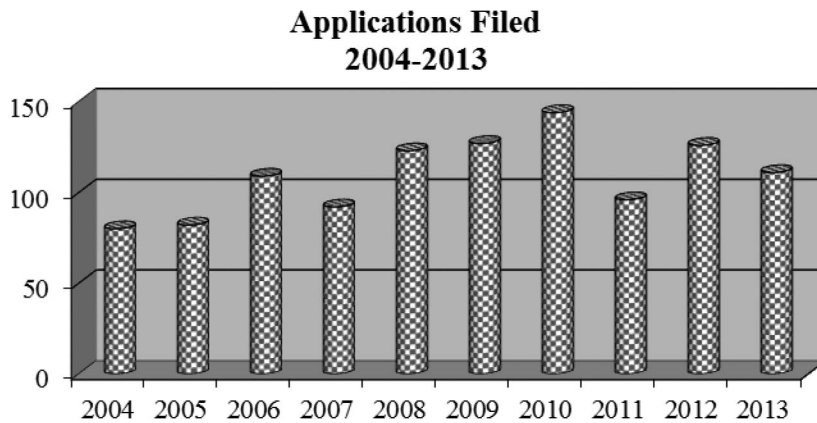
During the last quarter of 2013, new proposed revenue procedures governing APA applications and MAP applications were released for public comment in Notice 2013–79, 2013–50 I.R.B. 653, and Notice 2013–78, 2013–50 I.R.B. 633, respectively. These proposed revenue procedures reflect the changes in APMA's structure, and more importantly, were informed by the cumulative experience of more than 20 years of APA practice in the United States, which has produced more than eleven hundred unilateral and bilateral agreements since 1991.

The model APA agreement, which was last revised significantly in 2009 and is currently under review for future changes, appears in this report as Appendix 1. See Pub. L. 106–170 § 521(b)(2)(B). A list of primary APMA contacts is included as Appendix 2.

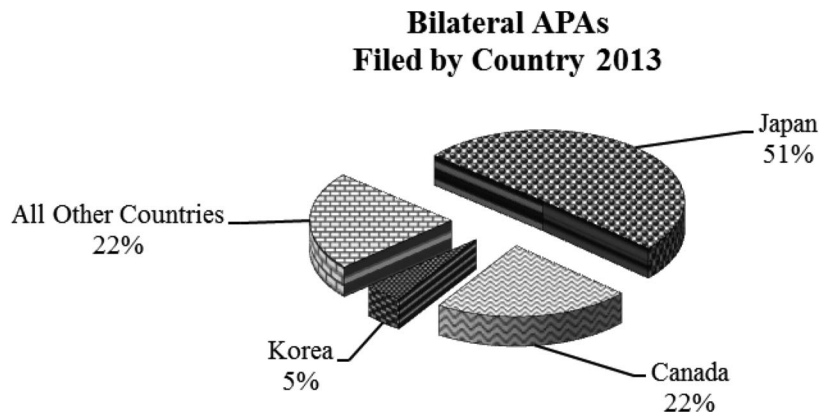
Part II. APMA Program Statistical Data
[Pub. L. 106-170 § 521(b)(2)(C)(i-viii)]

Table 1: APA Applications Filed
§ 521(b)(2)(C)(i)

	Unilateral	Bilateral	Multilateral	Total
Filed 1991-1999 ¹				401
Filed 2000-2012	439	904	1	1344
Filed in 2013	20	89	2	111
Total Filed 1991-2013				1856



The 111 APA applications received during 2013, represent a slight decrease from the 126 received in 2012. The table above illustrates the number of applications filed per year; however, the table does not include situations in which the taxpayer has paid a user fee but has not yet submitted a substantially complete APA request. As of December 31, 2013, APMA had received 42 user fee filings in addition to the 111 complete APA applications.



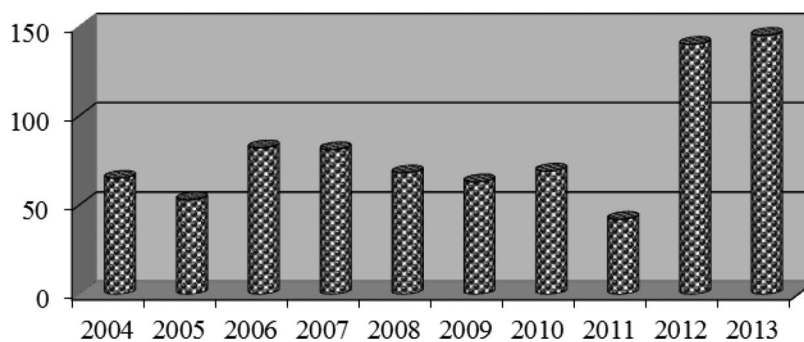
Almost 75 percent of the bilateral applications filed in 2013 involved either Japan or Canada.

¹The first APA Statutory Report, which compiled APA data from 1991-1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

Table 2: Executed and Pending APAs
 § 521(b)(2)(C)(ii-vi)

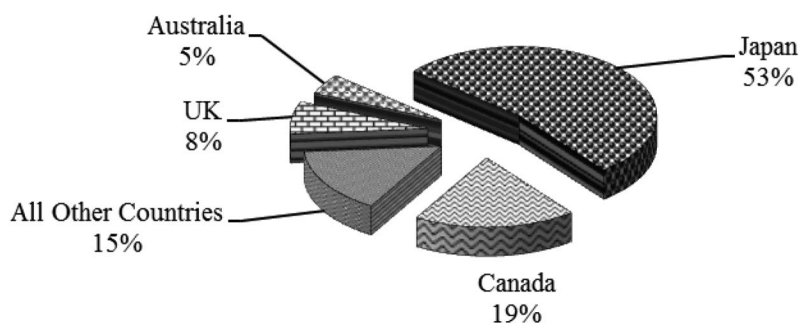
	Unilateral	Bilateral	Multilateral	Total
Total Executed 1991–2012	450	692	13	1155
Total Executed in 2013	39	105	1	145
Total Executed 1991–2013	489	797	14	1300
Total Pending	51	277	3	331
<i>Renewals Executed in 2013</i>	27	49	1	77
<i>Renewals Pending</i>	20	126	1	147

**APAs Executed
2004-2013**



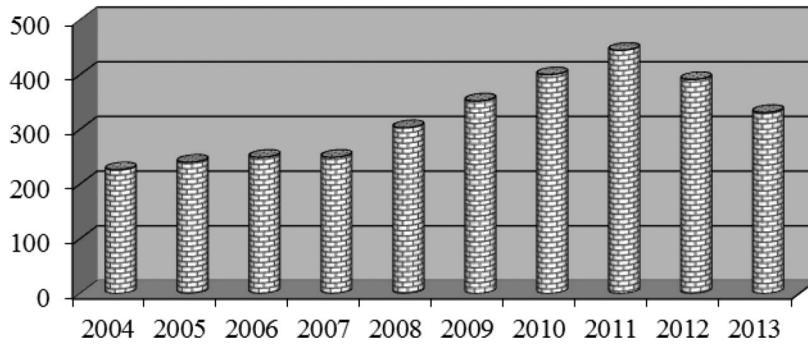
The APMA Program increased the number of APAs executed in its second year. The 145 APAs executed in 2013 surpassed the previous record of 140 executed agreements set in 2012. Of the 145 agreements executed in 2013, 68 of the agreements (47 percent) were new APAs (*i.e.*, not renewal APAs), an increase from the 57 (41 percent) new APAs executed in 2012.

**Bilateral APAs
Executed by Country 2013**



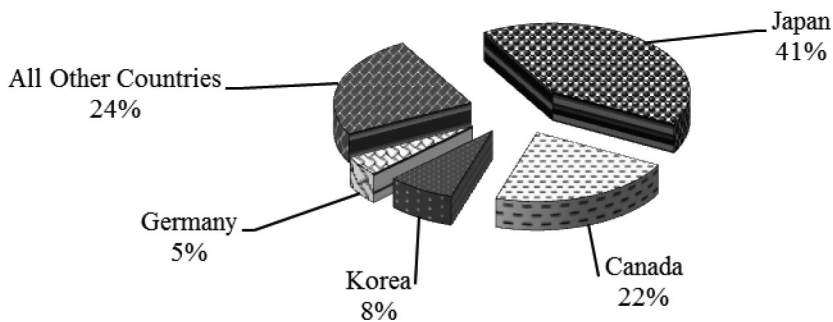
As the chart above illustrates, more than half of the total number of bilateral APAs executed in 2013 involved the United States entering into a mutual agreement with Japan. Canada's 19 percent also represents a significant portion of the bilateral agreements.

Pending APAs 2004-2013



The number of pending APAs decreased in 2013, primarily due to increased efficiencies within the new APMA Program. While the number of pending APAs at the end of 2013 was still higher than in some of the prior years reflected in the graph above, APMA's streamlining of internal processes and implementation of new procedures are expected to result in a continued decrease in the pending inventory in future years.

Bilateral APAs Pending by Country 2013



**Table 3: APAs Revoked or Cancelled and Applications Withdrawn
§ 521(b)(2)(C)(vii)**

	Unilateral	Bilateral	Multilateral	Total
Revoked or Cancelled 2013	0	0	0	0
Total Revoked or Cancelled 1991-2013				11
Applications Withdrawn in 2013	3	6	0	9
Total Applications Withdrawn 1991-2013				189

**Table 4: APAs Finalized or Renewed² by Industry
§ 521(b)(2)(C)(viii)**

Industry	
Wholesale/Retail Trade	60
Manufacturing	51
Services	11
Natural Resources and Transportation	9
All Other Industries	14

**APAs by Industry
Finalized or Renewed 2013**

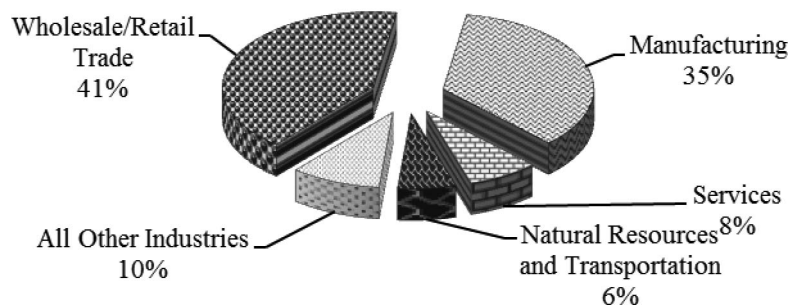
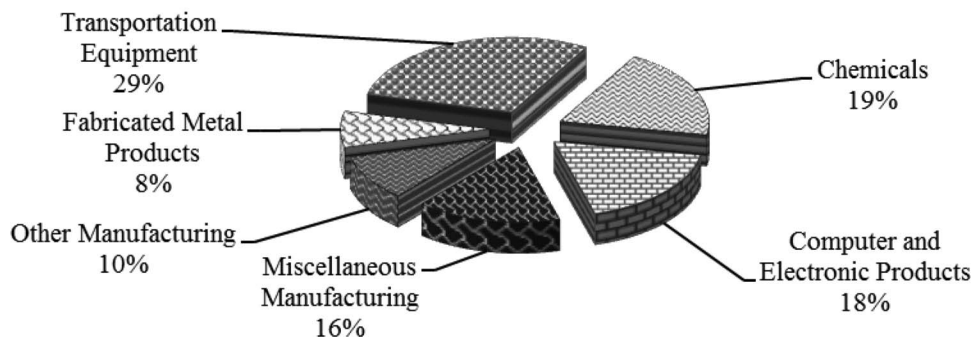


Table 4a: Manufacturing APAs Finalized or Renewed

Manufacturing	
Transportation Equipment	15
Chemicals	10
Computer and Electronic Products	9
Miscellaneous Manufacturing	8
Fabricated Metal Products	4
Other Manufacturing	5

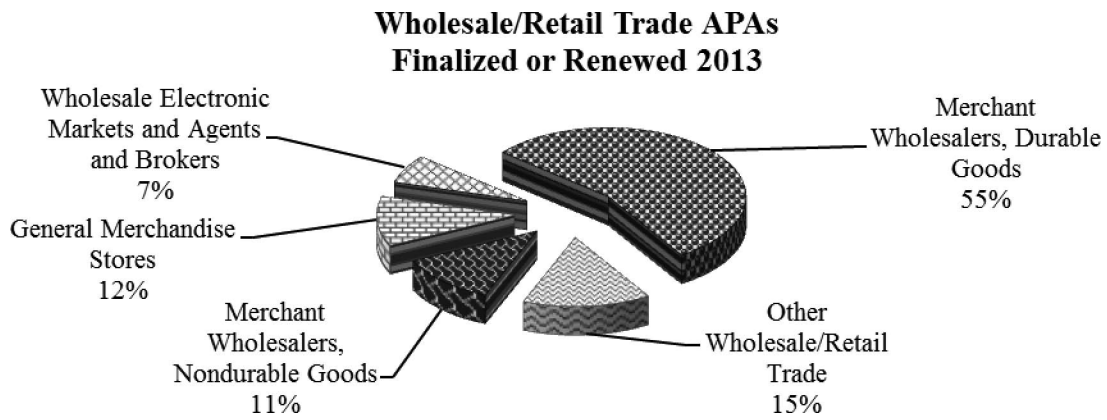
**Manufacturing APAs
Finalized or Renewed 2013**



²APAs finalized or renewed are the same as APAs executed.

Table 4b: Wholesale/Retail Trade APAs Finalized or Renewed

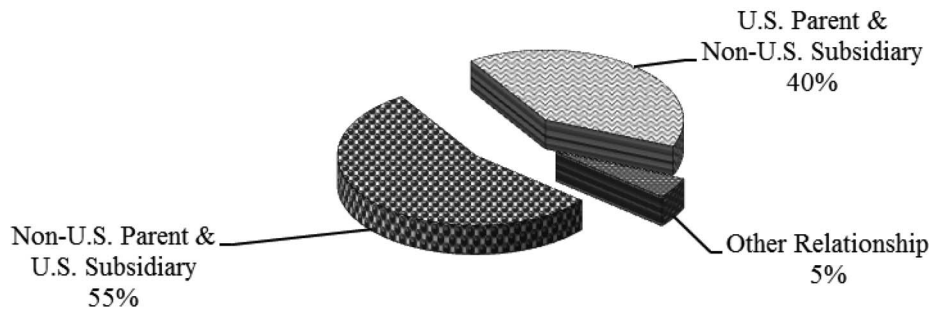
Wholesale/Retail Trade	
Merchant Wholesalers, Durable Goods	33
Merchant Wholesalers, Nondurable Goods	7
General Merchandise Stores	7
Wholesale Electronic Markets and Agents and Brokers	4
Other Wholesale/Retail Trade	9



Part III. General Descriptions of APAs Executed in 2013
[Pub. L. 106-170 § 521(b)(2)(D) and (E)]

Nature of the Relationships
§ 521(b)(2)(D)(i)

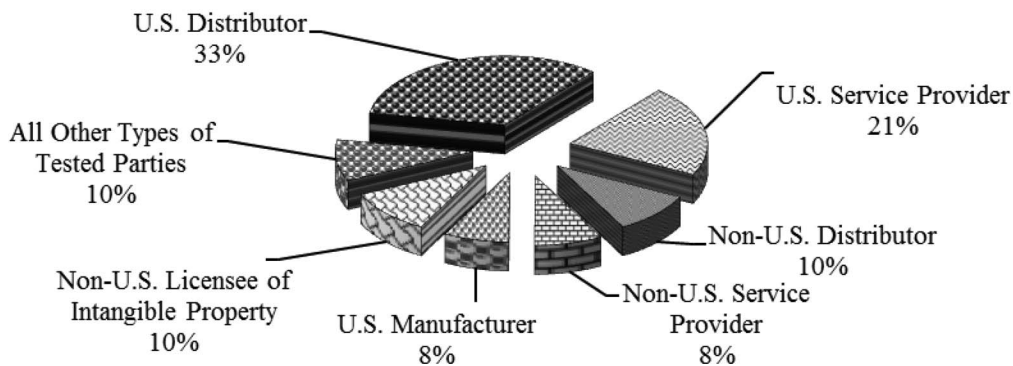
Relationships between Controlled Parties



As in prior years, more than half of the APAs executed in 2013 involved transactions between non-U.S. parents and U.S. subsidiaries. In 2013, approximately 55 percent of the APAs executed involved transactions between a non-U.S. parent and a U.S. subsidiary; 40 percent of the APAs executed involved transactions between a U.S. parent and a non-U.S. subsidiary; and the remaining 5 percent involved transactions that included either a partnership or a branch. In 2012, approximately 75 percent of the APAs executed involved transactions between a non-U.S. parent and a U.S. subsidiary, while the remaining 25 percent involved transactions between a U.S. parent and a non-U.S. subsidiary.

Tested Parties, Covered Transactions, Functions, and Risks
§ 521(b)(2)(D)(ii-iii)

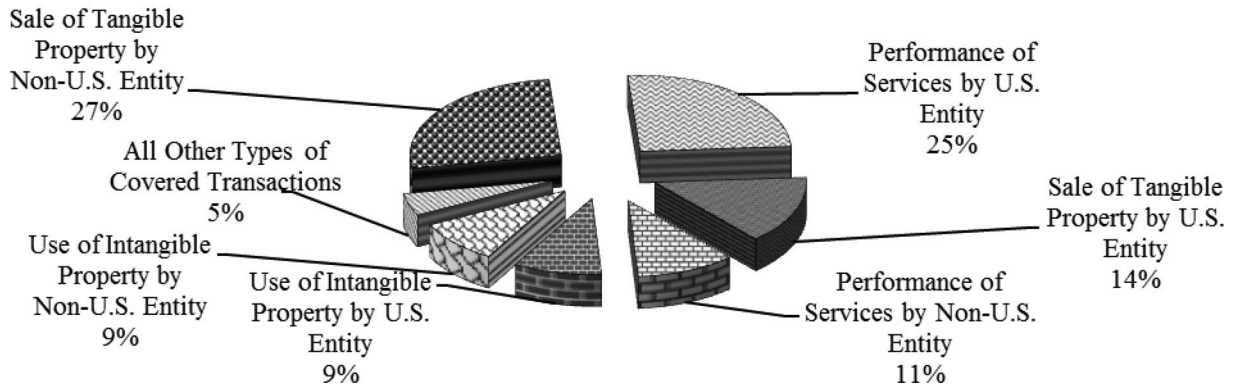
Types of Tested Parties



Consistent with prior years, the tested parties of the APAs executed in 2013³ fell primarily into one of two categories, *i.e.*, U.S. distributors and U.S. service providers. Combined, these two types of tested parties represent over 50 percent of the total. No other single type of entity represents greater than 10 percent of the total.

³Not all APAs executed in 2013 included a tested party.

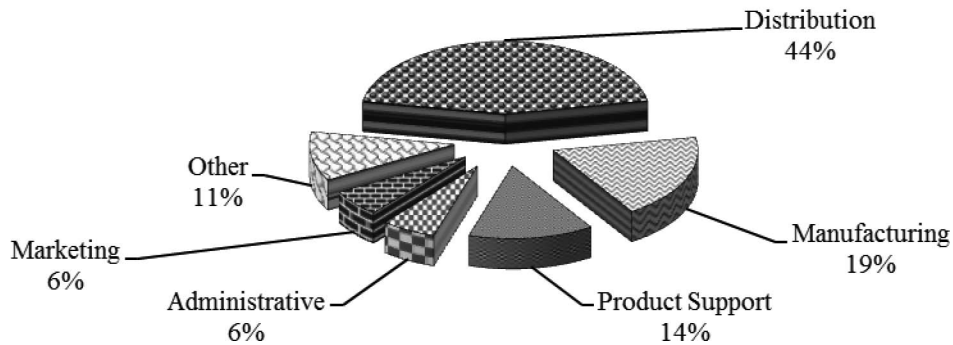
Types of Covered Transactions



Similar to 2012, 41 percent of the transactions covered in APAs executed in 2013 involved the sale of tangible goods and 36 percent involved the provision of services.

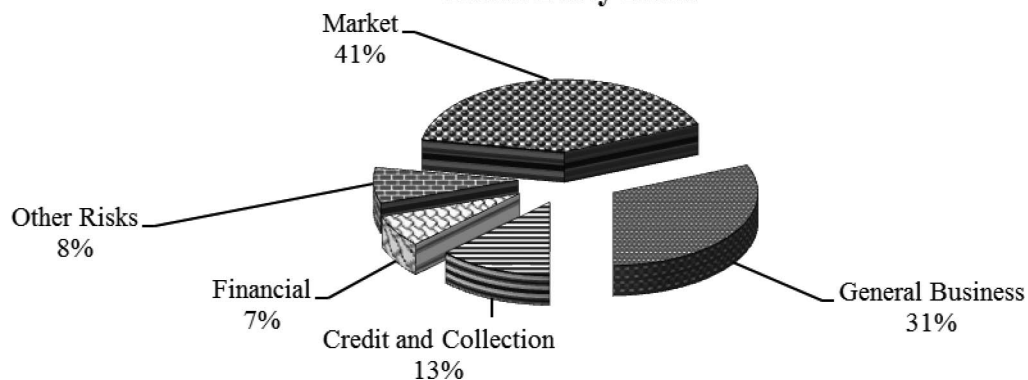
Although more than 75 percent of covered transactions involve tangible goods and services transactions, the IRS also has successfully completed numerous APAs involving transfers of intangibles. While complex transactions involving intangibles may be more challenging than other types of transactions and represent a smaller percentage of the APA inventory than other types of transactions, the IRS continues to seek opportunities to work with taxpayers and treaty partners to provide prospective certainty for such transactions wherever appropriate.

Tested Party Functions



More than 60 percent of the tested parties in the APAs executed in 2013 involved distribution or related functions, *e.g.*, marketing and product support.

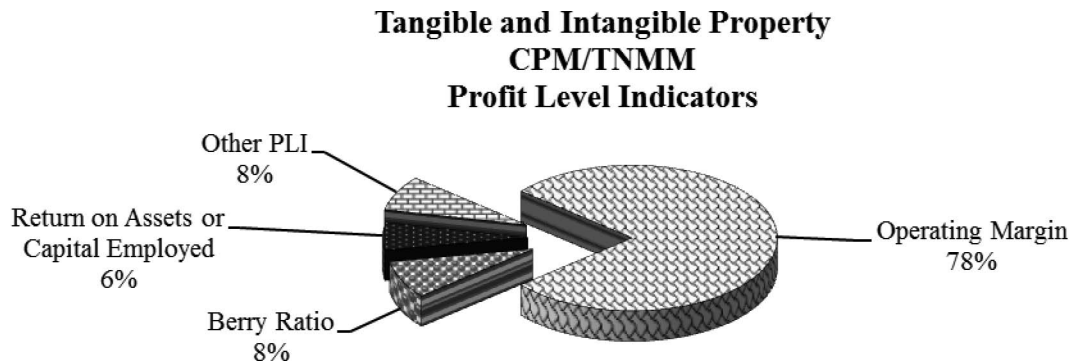
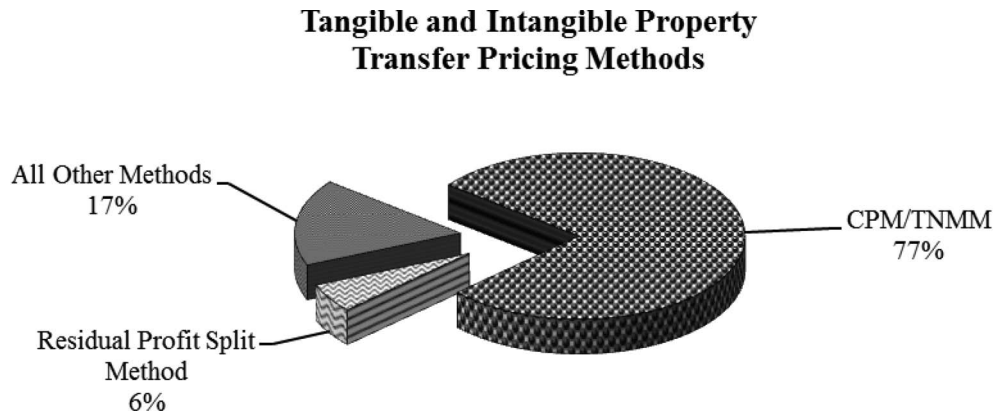
Tested Party Risks



The risks borne by the tested parties were primarily business risks, *e.g.*, market risk and general business risk. A small percentage of the tested parties bore other risks such as product liability or research and development risk.

Transfer Pricing Methods Used
§ 521(b)(2)(D)(iv)

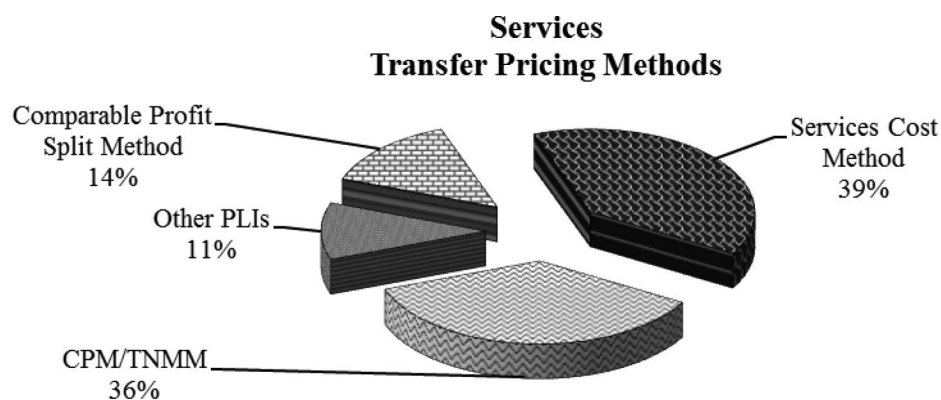
As shown on the following graphs, and consistent with prior years, the primary transfer pricing method used for transfers of both tangible and intangible property in APAs executed in 2013 was the Comparable Profits Method/Transactional Net Margin Method (CPM/TNMM).



In controlled transactions using the CPM/TNMM, the Operating Margin was the most common profit level indicator (PLI) used to benchmark results for transfers of tangible and intangible property. Per the applicable regulations, Operating Margin is defined as the ratio of operating profits to sales.⁴ The Berry Ratio, defined as the ratio of gross profit to operating expenses, was applied as the profit level indicator in 8 percent of the controlled transactions that used the CPM/TNMM.⁵ Each other profit level indicator accounted for a smaller share.

⁴Treas. Reg. § 1.482-5(b)(4)(ii)(A).

⁵Treas. Reg. § 1.482-5(b)(4)(ii)(B).



For services transactions, the majority of cases applied the Services Cost Method or the CPM/TNMM. The Services Cost Method evaluates the amount charged for certain services with reference to the total services costs.



When the CPM/TNMM is used to benchmark services transactions, the Berry Ratio continues to be the most frequently used PLI.

Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparable or Tested Party Data § 521(b)(2)(D)(v–vii)

For the APAs executed in 2013 that used external comparables data in the analysis, the most widely used data source for comparables was the Standard and Poor’s Compustat database. Other sources were also used in appropriate cases, *e.g.*, where the tested party was not the U.S. entity. The most commonly used sources are listed in the following table.

Table 5: Commonly Used Sources of Comparable Data	
Disclosure	Mergent
Orbis	GlobalVantage
Worldscope	OneSource
Osirus	

In the majority of cases, the process of selecting comparables included comparison of a potential comparable’s functions, risks, and industry to those of the tested party. The existence of comparable products was also considered in some cases.

In adjusting comparables, the standard balance sheet adjustments identified in Treas. Reg. § 1.482–1(d) and § 1.482–5(c), including adjustments to payables, receivables, and inventory, were made in the majority of cases. Where appropriate, accounting adjustments were made to convert from LIFO to FIFO inventory accounting, and a small number of cases also involved the accounting reclassification of expenses, *e.g.*, from COGS to operating expenses.

Ranges, Targets and Adjustment Mechanisms § 521(b)(2)(D)(viii–ix)

Almost 70 percent of the transactions covered in APAs executed in 2013 target an interquartile range as described in Treas. Reg. § 1.482–1(e)(2)(iii)(C). Where the transaction involves a royalty payment for the use of intangible property, both points and ranges

have been used. In some cases where the covered transaction is the payment of a royalty based solely on external royalty agreements, a secondary method, *e.g.*, a test of the post-royalty operating margin, has been imposed. The testing periods of the APAs executed in 2013 included either: (1) a single year, (2) the term of the APA not including any rollback years, or (3) the term of the APA including rollback years.

APAs executed in 2013 include a number of mechanisms for making adjustments to tested party results when the results fall outside the range or do not match the point required by the APA. The following are examples of the mechanisms used in the 2013 executed APAs: an adjustment bringing the tested party's results to the closest edge of the range applied to the results of a single year; an adjustment to the closest edge of the range applied to the results over the APA term; an adjustment to the specified point or royalty rate; or an adjustment to the median of the range for a single year.

Critical Assumptions

§ 521(b)(2)(D)(v)

The model APA used by the IRS (included as Appendix 1 of this report) includes a standard critical assumption that there will be no material changes to the taxpayer's business or to its tax or financial accounting practices during the APA term. Each of the APAs executed in 2013 included this standard critical assumption. A few bilateral cases have included critical assumptions tied to either the taxpayer's profitability in a certain year or over the term of the APA, or to the amount of non-covered transactions as a percentage of the taxpayer's revenue. Under § 11.03(2) of Rev. Proc. 2006-9, the IRS may require the taxpayer to show compliance with all the critical assumptions included in the APA. If the taxpayer's results violate the critical assumption, then the taxpayer is required to report to the IRS the event or events creating the violation. Pursuant to § 11.06(3) of Rev. Proc. 2006-9, when a critical assumption is violated, the APMA Director may agree to modify the APA. However, if there is no agreement to modify the APA, then the APA may be cancelled.

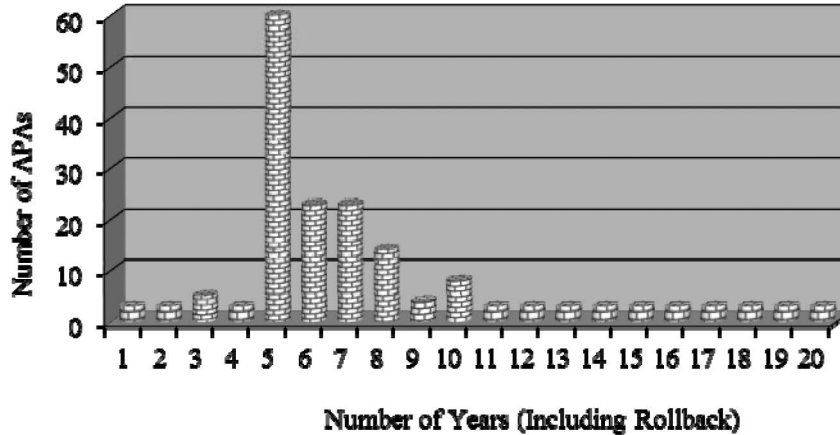
Term Lengths for APAs

§ 521(b)(2)(D)(x)

Table 6: Term Lengths (Including Rollback Years)

Term Length (years)	Number of APAs
1	≤3
2	≤3
3	5
4	≤3
5	60
6	23
7	23
8	14
9	4
10	8
11	≤3
12	≤3
13	≤3
14	≤3
15	≤3
16	≤3
17	≤3
18	≤3
19	≤3
20	≤3
Average	7 years

Term Length of APAs

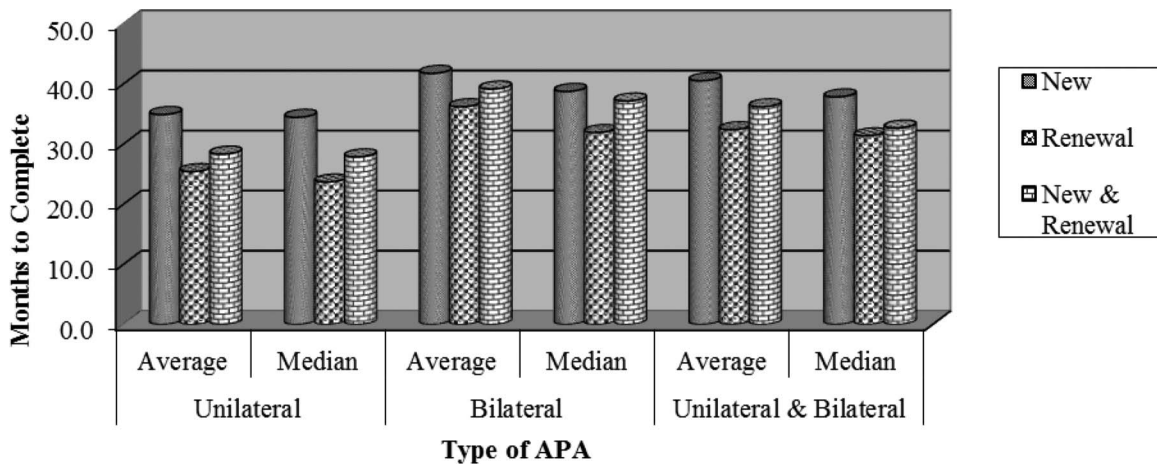


As described in § 4.07 of Rev. Proc. 2006–9, taxpayers should request at least a 5-year term in an APA submission, although the appropriate APA term is decided on a case-by-case basis. Of the APAs executed in 2013, 41 percent had a 5-year term while more than half had terms of 6 years or longer. For APAs with terms of greater than 6 years, a substantial number of those were submitted as a request for a 5-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer’s request). In 2013, 10 percent of the executed APAs included terms of 10 years or longer. The longer terms were agreed to based on the particular circumstances of each individual case and were often granted to ensure a reasonable amount of prospectivity in the APA term. The prospectivity of APA terms improved in 2013 from an average of 1 year in 2012 to 2 years in 2013. It is expected that the number of APAs with terms exceeding 10 years will decrease in future years as completion times continue to improve.

Amount of Time Taken to Complete New and Renewal APAs § 521(b)(2)(E)

Table 7: Months to Complete New and Renewal APAs § 521(b)(2)(E)

	Unilateral		Bilateral		Unilateral & Bilateral	
	Average	Median	Average	Median	Average	Median
New	34.9	34.5	41.8	38.8	40.5	37.8
Renewal	25.4	23.7	36.2	31.9	32.4	31.4
New & Renewal	28.4	27.9	39.2	37.2	36.2	32.7



The median time required to complete the 145 APAs executed in 2013 was approximately 7 months less than the median time in 2012. Most of the improvement in completion time is attributable to bilateral APAs where agreements were reached more quickly with our treaty partners. These bilateral APA agreements were reached more quickly because of increased correspondence in advance

of face-to-face meetings, elimination of the handoffs that took place prior to the merger⁶, and a streamlined post-agreement process that moved from sequential processing to parallel processing once an agreement is reached.⁷

Efforts to Ensure Compliance with APAs
§ 521(b)(2)(F)

As described in § 11.01 of Rev. Proc. 2006–9, APA taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of the APA. The filing and review of annual reports is a critical part of the APA process. Through annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review provides current information on the success or problems associated with the various transfer pricing methods (TPMs) adopted in the APA process.

All reports received by the APMA Program are assigned to a designated APMA team leader or economist. Whenever possible, annual report reviews are assigned to the team leader who worked the case, or another staff member who is already familiar with the relevant facts and terms of the agreement. Other team leaders and economists may assist the assigned staff member as well. The annual report is also sent to the field personnel with exam jurisdiction over the taxpayer. The field personnel conduct a parallel compliance review and coordinate with APMA personnel to resolve any questions or problems that might arise.

Nature of Documentation Required in Annual Report
§ 521(b)(2)(D)(xi)

APAs executed in 2013 required taxpayers to provide various documents with their annual reports, depending on the specific facts of the case. While not every annual report will include each of the documents listed below (*e.g.*, where no compensating adjustment occurs, no documentation is required) the documents listed below are required where the facts demonstrate a need for such documentation.

1.	Statement identifying all material differences between Taxpayer’s business operations during APA Year and description of Taxpayer’s business operations contained in Taxpayer’s request for APA. If there have been no such material differences, a statement to that effect.
2.	Statement of all material changes in the Taxpayer’s accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer’s request for the APA. If there has been no material change in accounting methods and classifications or methods of estimation, a statement to that effect.
3.	Description of any failure to meet Critical Assumptions. If there has been none, a statement to that effect.
4.	Copy of the APA.
5.	Financial analysis demonstrating Taxpayer’s compliance with TPM.
6.	Organizational chart.
7.	Any change to the taxpayer notice information in section 14 of the APA.
8.	The amount, reason for, and financial analysis of any compensating adjustment under Paragraph 4 of Appendix A and Rev. Proc. 2006–9, § 11.02(3), for the APA Year, including but not limited to: the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of Taxpayer’s group that is relevant to the APA.
9.	The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M–1 or Schedule M–3 of the U.S. return for the APA Year.
10.	Financial statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent CPA or other documentation required by paragraph 5(f) of the APA.
11.	Where required by paragraph 5(f) of the APA, certified public accountant’s opinion that financial statements present fairly the financial position of Taxpayer and the results of its operations, in accordance with a foreign GAAP.
12.	Where applicable, financial statements as prepared in accordance with a foreign GAAP.
13.	Various work papers.
14.	Where applicable, a review of the financial statements by a certified public accountant.

Approaches for Sharing of Currency or Other Risks
§ 521(b)(2)(D)(xii)

In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

⁶Before the merger, a developed APA position was “handed off” from an APA team leader to a USCA analyst who would then discuss the case with the treaty partner. When the USCA office reached agreement with the treaty partner and entered into a mutual agreement under the treaty, the agreement was “handed off” from the USCA analyst back to the APA Director and team leader to draft the domestic APA.

⁷For example, APMA would send a draft APA to the taxpayer in advance of receiving the signed agreement from the treaty partner.

**APPENDIX 1– Model APA (based on Rev. Proc. 2006–9)
[§ 521(b)(2)(B)]**

ADVANCE PRICING AGREEMENT
between
[Insert Taxpayer’s Name]
and
THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer’s Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as “Taxpayer”), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer’s principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties’ agreement on the best method for determining arm’s-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending _____ to _____, executed on _____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to the APA Term, as defined in Appendix A.
4. *Operation.*
 - a. Revenue Procedure 2006–9 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006–9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer’s timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
 - b. {Use or edit the following when U.S. Group or Foreign Group contains more than one member.} [This APA addresses the arm’s-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.

d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

- i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
- ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006–9; or
- iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006–9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006–9, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482–1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2006–9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006–9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106–170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the Director of the Advance Pricing and Mutual Agreement Program, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006–9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006–9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006–9, section 4.11. The IRS will send notices to:

Taxpayer Corporation
Attn: Jane Doe, Sr. Vice President (Taxes)
1000 Any Road
Any City, USA 10000
(phone: _____)

15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____
Jane Doe
Sr. Vice President (Taxes)

Date: _____, 201__

IRS

By: _____
Richard J. McAlonan, Jr.
Director, Advance Pricing and Mutual Agreement Program

Date: _____, 201__

APPENDIX A

COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. APA Term.

This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).

3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

● CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

● CUT Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between _____% and _____ % of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

● Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____ %, and the Median of the Arm's Length Range is _____%.

● Cost Plus Method

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____ %, and the Median of the Arm's Length Range is _____%.

● CPM with Berry Ratio PLI

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between _____ and _____, and the Median of the Arm's Length Range is _____.

● CPM using an Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between _____% and _____ %, and the Median of the Arm's Length Range is _____%.

● CPM using a Three-year Rolling Average Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulation section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulation section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between _____% and _____ %, and the Median of the Arm's Length Range is _____%.

● Residual Profit Split Method

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

[Insert additional provisions as needed.]

4. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

(a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and

(b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

5. APA Revenue Procedure Treatment

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (a "primary adjustment"), Taxpayer and its related foreign entity may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9 and avoid the possible adverse tax consequences of a secondary adjustment that would otherwise follow the primary adjustment.

[Insert additional provisions as needed.]

APPENDIX B
CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C
APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report (and each of the four copies required by paragraph 5(e) of this APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix E to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
 - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
 - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
 - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
 - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.
 - e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.
 - f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.
 - g. The amount, reason for, and financial analysis of (1) any primary adjustments made under Appendix A for the APA Year; and (2) any (a) secondary adjustments that follow such primary adjustments or (b) accounts receivable that Taxpayer establishes, in lieu of secondary adjustments, by electing APA Revenue Procedure Treatment pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:
 - i. the amounts due or owed, and paid or received by each affected entity;
 - ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return;
 - iii. the date(s) and means by which the payments are or will be made; and
 - iv. whether or not APA Revenue Procedure was elected pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3).
 - h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.
 - i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.
5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.
7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.
8. A copy of the APA and any amendment.
9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2006-9, section 11.01(6) and (7).

APPENDIX D
DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

Term	Definition
Annual Report	A report within the meaning of Revenue Procedure 2006–9, section 11.01.
APA	This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006–9, section 2.04.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in paragraph 5(a) of this APA.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106–170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2006–9	Rev. Proc. 2006–9, 2006–1 C.B. 278.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulation section 1.482–1(b) and Revenue Procedure 2006–9, section 2.04.
U.S. GAAP	U.S. generally-accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. { <i>Or substitute for partnership: For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.</i> }
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

APA Annual Report SUMMARY	Department of the Treasury— Internal Revenue Service Large Business and International Division Transfer Pricing Operations Advance Pricing and Mutual Agreement Program	APA No. _____ Team Leader _____ Economist _____ Intl Examiner _____
----------------------------------	--	--

APA Information	Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 201__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50–100 million <input type="checkbox"/> \$100–250 million <input type="checkbox"/> \$250–500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point
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APA Annual Report Information

(to be completed by the Taxpayer)

APA date executed: _____, 201__

This APA Annual Report Summary is for APA Year(s) ending in 200__ and was filed on _____, 201_____

Check here if Annual Report was filed after original due date but in accordance with extension.

Has this APA been amended or changed? yes no Effective Date: _____

Has Taxpayer complied with all APA terms and conditions? yes no

Were all the critical assumptions met? yes no

Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report?
 yes no If yes, which year(s): 200____

Have any necessary Secondary Compensating Adjustments been made? yes no

Did Taxpayer elect APA Revenue Procedure treatment? yes no

Any change to the entity classification of a party to the APA? yes no

Taxpayer notice information contained in the APA remains unchanged? yes no

Taxpayer's current US principal place of business: (City, State) _____

APA Annual Report Checklist of Key Contents

(to be completed by the Taxpayer)

Financial analysis reflecting TPM calculations yes no

Financial statements showing compliance with TPM(s) yes no

Schedule M-1 or M-3 book-tax differences yes no

Current organizational chart of relevant portion of world-wide group yes no

Attach copy of APA yes no

Other APA records and documents included:

Contact Information

Authorized Representative	Phone Number	Affiliation and Address

APPENDIX 2 – APMA Contacts

APMA LEADERSHIP			
Director	McAlonan, Richard	202-515-4706	<i>richard.j.mcalonanjr@irs.gov</i>
Deputy Director	Dhawale, Hareesh	202-515-4306	<i>hareesh.dhawale@irs.gov</i>
ECONOMISTS			
Senior Manager	Larson, Chuck	312-292-3663	<i>charles.r.larson@irs.gov</i>
Senior Manager	Thayer, Victor	949-360-3435	<i>victor.e.thayer@irs.gov</i>
AUSTRALIA, AUSTRIA, GERMANY, ISRAEL, JAPAN, KAZAKHSTAN, NETHERLANDS, NEW ZEALAND, RUSSIA & UKRAINE			
Senior Manager	Cohen, Judith	202-515-4312	<i>judith.c.cohen@irs.gov</i>
CHINA, INDONESIA, JAPAN, SOUTH AFRICA & THAILAND			
Senior Manager	Rock, Peter	415-547-3776	<i>peter.c.rock@irs.gov</i>
CANADA, ITALY & LUXEMBOURG			
Senior Manager	McOmer, Jim	202-515-4742	<i>james.b.mcomber2@irs.gov</i>
DENMARK, INDIA, IRELAND, NORWAY, SWEDEN, SWITZERLAND & UK			
Senior Manager	Hughes, John	202-515-4307	<i>john.c.hughes@irs.gov</i>
ARGENTINA, CANADA, CARIBBEAN, MEXICO, PORTUGAL, PUERTO RICO, SPAIN & VENEZUELA			
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As of March 27, 2014

Application of One-Per-Year Limit on IRA Rollovers Announcement 2014–15

This announcement addresses the application to Individual Retirement Accounts and Individual Retirement Annuities (collectively, “IRAs”) of the one-rollover-per-year limitation of § 408(d)(3)(B) of the Internal Revenue Code and provides transition relief for owners of IRAs.

Section 408(d)(3)(A)(i) provides generally that any amount distributed from an IRA will not be included in the gross income of the distributee to the extent the amount is paid into an IRA for the benefit

of the distributee no later than 60 days after the distributee receives the distribution. Section 408(d)(3)(B) provides that an individual is permitted to make only one rollover described in the preceding sentence in any 1-year period. Proposed Regulation § 1.408–4(b)(4)(ii) and IRS Publication 590, *Individual Retirement Arrangements (IRAs)*, provide that this limitation is applied on an IRA-by-IRA basis. However, a recent Tax Court opinion, *Bobrow v. Commissioner*, T.C. Memo. 2014-21, held that the limitation applies on an aggregate basis, meaning that an individual could not make an IRA-to-IRA rollover if he or she had made such a rollover involving any of the individual’s IRAs in the preceding 1-year pe-

riod. The IRS anticipates that it will follow the interpretation of § 408(d)(3)(B) in *Bobrow* and, accordingly, intends to withdraw the proposed regulation and revise Publication 590 to the extent needed to follow that interpretation. These actions by the IRS will not affect the ability of an IRA owner to transfer funds from one IRA trustee directly to another, because such a transfer is not a rollover and, therefore, is not subject to the one-rollover-per-year limitation of § 408(d)(3)(B). See Rev. Rul. 78–406, 1978–2 C.B. 157.

The IRS has received comments about the administrative challenges presented by the *Bobrow* interpretation of § 408(d)(3)(B). The IRS understands that adoption of the Tax Court’s interpretation

of the statute will require IRA trustees to make changes in the processing of IRA rollovers and in IRA disclosure documents, which will take time to implement. Accordingly, the IRS will not apply the *Bobrow* interpretation of § 408(d)(3)(B) to any rollover that involves an IRA distribution occurring before January 1,

2015. Regardless of the ultimate resolution of the *Bobrow* case, the Treasury Department and the IRS expect to issue a proposed regulation under § 408 that would provide that the IRA rollover limitation applies on an aggregate basis. However, in no event would the regulation be effective before January 1, 2015.

DRAFTING INFORMATION

The principal author of this announcement is Roger Kuehne of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this announcement may be sent via e-mail to RetirementPlanQuestions@irs.gov.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
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Internal Revenue Service

Washington, DC 20224

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