

**§ 1.148-5 Yield and valuation of investments.**

\* \* \* \* \*

- (d) \* \* \*  
 (6) \* \* \*  
 (iii) \* \* \*  
 (A) \* \* \*

(1) The bid specifications are in writing and are timely forwarded, or are made available on an internet website or other similar electronic media that is regularly used to post bid specifications, to potential bidders. For purposes of this paragraph (d)(6)(iii)(A), a writing includes a hard copy, a fax, or an electronic e-mail copy.

\* \* \* \* \*

(6) All potential providers have an equal opportunity to bid. If the bidding process affords any opportunity for a potential provider to review other bids before providing a bid, then providers have an equal opportunity to bid only if all potential providers have an equal opportunity to review other bids. Thus, no potential provider may be given an opportunity to review other bids that is not equally given to all potential providers (that is, no exclusive “last look”).

\* \* \* \* \*

**Par. 9.** Section 1.148-5(e)(2) is amended by revising the second sentence of paragraph (e)(2)(ii)(B) to read as follows:

**§ 1.148-5 Yield and valuation of investments.**

\* \* \* \* \*

- (e) \* \* \*  
 (2) \* \* \*  
 (ii) \* \* \*

(B) *External commingled funds.* \* \* \*  
 For purposes of this paragraph (e)(2)(ii)(B), a fund is treated as widely held only if, during the immediately preceding fixed, semiannual period chosen by the fund (for example, semiannual periods ending June 30 and December 31), the fund had a daily average of more than 15 investors that were not related parties, and at least 16 of the unrelated investors each maintained a daily average amount invested in the fund that was not less than the lesser of \$500,000 and one percent (1%) of the daily average of the total amount invested in the fund (with it being understood that additional smaller investors will not disqualify the fund). \* \* \*

\* \* \* \* \*

**Par. 10.** Section 1.148-8(d) is revised to read as follows:

**§ 1.148-8 Small Issuer Exception to Rebate Requirement.**

\* \* \* \* \*

(d) *Pooled financings—treatment of conduit borrowers.* A loan to a conduit borrower in a pooled financing qualifies for the small issuer exception, regardless of the size of either the pooled financing or of any loan to other conduit borrowers, only if—

(1) The bonds of the pooled financing are not private activity bonds;

(2) None of the loans to conduit borrowers are private activity bonds; and

(3) The loan to the conduit borrower meets all the requirements of the small issue exception.

\* \* \* \* \*

**Par. 11.** Section 1.148-11 is revised by adding new paragraph (k) as follows:

**§ 1.148-11 Effective Dates.**

\* \* \* \* \*

(k) *Certain arbitrage guidance updates.*

(1) *In general.* Sections 1.148-3(d)(1)(iv); 1.148-3(d)(4); 1.148-4(a); 1.148-4(b)(3)(i); 1.148-4(h)(2)(ii)(A); 1.148-4(h)(2)(v); 1.148-4(h)(2)(vi); 1.148-4(h)(2)(viii); 1.148-4(h)(3)(iv)(B); 1.148-4(h)(4)(i)(C); 1.148-5(c)(3); 1.148-5(d)(6)(iii)(A) and 1.148-5(e)(2)(ii)(B), as in effect on the effective date of the final regulations (the revised provisions), apply to bonds sold on or after the date that is 90 days after publication of the final regulations in the **Federal Register**, for bonds subject to such applicable section of the regulations as in effect before the effective date of the final regulations.

(2) *Permissive earlier application.* To the extent provided in paragraphs (k)(2)(i) through (vi) of this section, issuers may apply the proposed regulations to bonds sold before the date that is 90 days after publication of the final regulations in the **Federal Register**.

(i) Section 1.148-3(d)(1)(iv) and § 1.148-3(d)(4) may be applied for bond years ending on or after the date of publication of the proposed regulations in the **Federal Register** for bonds to which 1.148-3(d)(1)(iv) applies.

(ii) Section 1.148-4(b)(3)(i) may be applied for bonds sold on or after the date of publication of the proposed regulations in the **Federal Register** for bonds to which that section applies.

(iii) Sections 1.148-4(h)(2)(ii)(A), 1.148-4(h)(2)(v), 1.148-4(h)(2)(vi), 1.148-4(h)(2)(viii), 1.148-4(h)(3)(iv)(B), and 1.148-4(h)(4)(i)(C) may be applied, in whole but not in part, for qualified hedges entered into on or after the date of publication of the proposed regulations in the **Federal Register** for bonds to which § 1.148-4(h) applies.

(iv) Section 1.148-5(c)(3) may be applied for investments purchased on or after the date of publication of the

proposed regulations in the **Federal Register** for bonds to which that section applies.

(v) Section 1.148-5(d)(6)(iii)(A) may be applied to guaranteed investment contracts entered into on or after the date of publication of the proposed regulations in the **Federal Register** for bonds to which § 1.148-5(d)(6)(iii) applies.

(vi) Section 1.148-5(e)(2)(ii)(B) may be applied with respect to investors investing in the fund on or after the date of publication of the proposed regulations in the **Federal Register** for bonds to which that section applies.

(3) *Rebate overpayment recovery.*

Section 1.148-3(j) applies to bonds subject to § 1.148-3(i).

(4) *Small issuer exception to rebate requirement for conduit borrowers of pooled financings.* Section 1.148-8(d) applies to bonds issued after May 17, 2006.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

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

[REG-148393-06]

RIN 1545-BG12

**Medical and Accident Insurance Benefits Under Qualified Plans; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to notice of proposed rulemaking that was published in the **Federal Register** on Monday, August 20, 2007 (72 FR 46421), regarding the tax treatment of payments by qualified plans for medical or accident insurance.

**FOR FURTHER INFORMATION CONTACT:** Pamela Kinard at (202) 622-6060.

**SUPPLEMENTARY INFORMATION:****Background**

The notice of proposed rulemaking (REG-148393-06) that is the subject of these corrections is under section 402(a) of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking (REG-148393-06) contains

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

### Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-148393-06) that was the subject of FR Doc. E7-16084 is corrected as follows:

1. On page 46423, column 3, in the preamble, under the paragraph heading “*Explanation of Provisions*”, paragraph 2, lines 11 and 12, the language “to provide medical benefits in section 401(h) under a qualified plan or annuity” is corrected to read “to provide medical benefits in a section 401(h) account under a qualified plan or annuity”.

2. On page 46424, column 1, in the preamble, under the paragraph heading “*Explanation of Provisions*”, paragraph 3, line 22, the language “Public Lic 108-311” is corrected to read “Public Law 108-311”.

### § 1.402(a)-1 [Corrected]

3. On page 46425, column 2, § 1.402(a)-1, lines 1 and 2, the language “(a) \* \* \* (1) \* \* \* (i) \* \* \*” is corrected to read “(a) \* \* \* (1)(i) \* \* \*”.

4. On page 46425, column 2, § 1.402(a)-1(a)(1)(ii), lines 3 and 4, the language “qualified pension, annuity, profit sharing, or stock bonus plan to provide” is corrected to read “qualified pension, annuity, profit-sharing, or stock bonus plan to provide.”

5. On page 46425, column 2, § 1.402(a)-1(e), line 3, the language “profit sharing, or stock bonus plan—(1)” is corrected to read “profit-sharing, or stock bonus plan—(1)”.

6. On page 46426, column 1, § 1.402(a)-1(e)(6), paragraph (ii) of *Example.*, line 3, the language “the \$1,000 constitutes a distribution under” is corrected to read “\$1,000 constitutes a distribution under”.

### La Nita Van Dyke,

*Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7-18989 Filed 9-25-07; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 301

[REG-129916-07]

RIN 1545-BG76

### Patented Transactions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide rules relating to the disclosure of reportable transactions under sections 6011 and 6111 of the Internal Revenue Code (Code). These regulations propose to add the patented transactions category of reportable transaction to the regulations under § 1.6011-4 of the Income Tax Regulations. The regulations also include conforming changes to the rules relating to the disclosure of reportable transactions by material advisors under section 6111. The regulations affect taxpayers participating in reportable transactions under section 6011, material advisors responsible for disclosing reportable transactions under section 6111, and material advisors responsible for keeping lists under section 6112.

**DATES:** Written or electronic comments and requests for a public hearing must be received by December 26, 2007.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-129916-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-129916-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-129916-07).

### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Michael H. Beker or Charles D. Wien, (202) 622-3070; concerning the submissions of comments and requests for hearing, Richard Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

### Background

This document proposes to amend 26 CFR parts 1 and 301 by adding the patented transactions category of reportable transaction to the rules under

section 6011 and by making conforming changes to the rules relating to the disclosure of reportable transactions by material advisors under section 6111.

On November 1, 2006, the IRS and Treasury Department issued a notice of proposed rulemaking and temporary and final regulations under sections 6011, 6111, and 6112 (REG-103038-05, REG-103039-05, REG-103043-05, TD 9295) (the November 2006 regulations). The November 2006 regulations were published in the **Federal Register** (71 FR 64488, 71 FR 64496, 71 FR 64501, 71 FR 64458) on November 2, 2006. In the preamble to those proposed regulations, the IRS and Treasury Department expressed concern, shared by many commentators, regarding the patenting of tax advice or tax strategies that have the potential for tax avoidance. A patent for tax advice or a tax strategy might be interpreted by taxpayers as approval by the IRS and Treasury Department of the transaction, which might impede the efforts of the IRS and Treasury Department to obtain information regarding tax avoidance transactions and have an impact on effective tax administration. Consequently, the IRS and Treasury Department requested comments regarding the creation of a new category of reportable transaction to address these concerns.

The IRS and Treasury Department received written public comments responding to the proposed regulations and held a public hearing regarding the proposed rules on March 20, 2007. After consideration of the comments received, the IRS and Treasury Department are issuing these proposed regulations with respect to patented transactions. Upon publication of final regulations, these regulations will be effective for transactions entered into on or after the date of publication of this notice of proposed rulemaking.

### Explanation of Provisions

In response to the request for comments, the IRS and Treasury Department received five comments regarding the creation of a new category of reportable transaction to address the patenting of tax advice or tax strategies. One commentator suggested that the patenting of tax advice or tax strategies should not be addressed through the addition of a new category of reportable transaction. The commentator suggested that the IRS should require a form of notification or have a disclosure requirement informing the IRS when the United States Patent and Trademark Office (USPTO) issues a tax strategy patent. The commentator suggested that this could be accomplished through