

INTERNAL REVENUE BULLETIN



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.

Bulletin No. 2021-21
May 24, 2021

EMPLOYEE PLANS, INCOME TAX

Rev. Proc. 2021-25, page 1161.

This revenue procedure provides the 2022 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Treasury Regulations.

INCOME TAX

AOD 2021-2, page 1156.

Nonacquiescence to the holding that the economic benefits of a compensatory split-dollar life insurance arrangement may be treated as a distribution with respect to stock under I.R.C. § 301.

Notice 2021-26, page 1157.

This notice addresses the taxation of dependent care benefits, provided through a dependent care assistance program, available in taxable years ending in 2021 and 2022 due to

the application of either the carryover or the extension of a claims period under § 214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (Dec. 27, 2020). The notice clarifies that if these dependent care benefits would have been excluded from income if used during the preceding taxable year (that is, during the taxable year ending in 2020 or 2021, as applicable), they will remain excludable from gross income and are not wages of the employee for the taxable years ending in 2021 and 2022. In addition, the notice clarifies that these benefits will not be taken into account for purposes of the application of the limits under § 129 of the Internal Revenue Code to other dependent care benefits available for the taxable years ending in 2021 and 2022.

Notice 2021-32, page 1159.

This notice provides the inflation adjustment factors and reference prices for calendar year 2021 that are used to determine the availability of the renewable electricity production credit, the refined coal production credit, and the Indian coal production credit under section 45. The notice also provides the credit amounts for calendar year 2021 under section 45.

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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Actions Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommenda-

tion of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the **Internal Revenue Bulletin**.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding

of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner does NOT ACQUIESCE in the following decision:

Machacek v. Commissioner, 906 F.3d 429 (6th Cir. 2018), rev’g T.C. Memo. 2016-55.¹

¹Nonacquiescence to the holding that the economic benefits of a compensatory split-dollar life insurance arrangement may be treated as a distribution with respect to stock under I.R.C. § 301.

Part III

TAXATION OF DEPENDENT CARE BENEFITS AVAILABLE PURSUANT TO AN EXTENDED CLAIMS PERIOD OR CARRYOVER

NOTICE 2021-26

PURPOSE

This notice addresses the taxation of dependent care benefits, provided through a dependent care assistance program, available in taxable years ending in 2021 and 2022 due to the application of either the carryover or the extension of a claims period under § 214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (Dec. 27, 2020) (CAA). The notice clarifies that if these dependent care benefits would have been excluded from income if used during the preceding taxable year (that is, during the taxable year ending in 2020 or 2021, as applicable), they will remain excludable from gross income and are not wages of the employee for the taxable years ending in 2021 and 2022. In addition, the notice clarifies that these benefits will not be taken into account for purposes of the application of the limits under § 129 of the Internal Revenue Code (Code) to other dependent care benefits available for the taxable years ending in 2021 and 2022.

BACKGROUND

A. Dependent Care Assistance Programs – In General

Section 129 of the Code provides an exclusion from gross income of an employee for amounts paid or incurred by the employer for dependent care assistance benefits provided to the employee if the assistance is furnished pursuant to a dependent care assistance program (DCAP)

described in § 129. Section 129(a)(2) limits the benefits that may be excluded with respect to dependent care assistance services provided during the taxable year. For 2020, the exclusion could not exceed \$5,000, or \$2,500 in the case of a separate return filed by a married individual.

DCAPs may be provided by a flexible spending arrangement (FSA) under a § 125 cafeteria plan. Thus, an employee may contribute to the DCAP through salary reduction, and the DCAP may reimburse the employee for dependent care expenses incurred during the year. The reimbursements of dependent care expenses are excluded from gross income under § 129. Reimbursements that are not excludable under § 129 are includable in the employee's gross income and wages.¹

The limitation under § 129 applies to amounts paid or reimbursed for dependent care services provided during the taxable year of the employee. Under Notice 2005-42, 2005-1 CB 1204, unused benefits in a DCAP may be used during a 2½ month grace period following the end of the plan year. If the sum of DCAP benefits used in the taxable year (including unused DCAP benefits used during a grace period, or a portion thereof, that falls in the taxable year) exceeds the applicable limit under § 129, however, the excess is taxable.

B. Section 214(a) and (b) of the Act – Carryovers and Extended Claims Periods

Section 214(a) and (b) of the Act allow DCAPs to carry over unused benefits from a plan year ending in 2020 to a plan year ending in 2021 and from a plan year ending in 2021 to a plan year ending in 2022. Alternatively, § 214(c)(1) allows a DCAP to extend its claims period for a plan year ending in 2020 or 2021 to 12 months after the end of the plan year with respect to unused benefits remaining in the DCAP.

Notice 2021-15, 2021-10 IRB 898, provides guidance regarding the implementation of the temporary ability under § 214 of the Act to allow unused DCAP benefits

remaining at the end of a plan year to reimburse dependent care expenses incurred in the next plan year, either due to a carryover or an extended period for incurring claims. Notice 2021-15 states that:

If an employer adopts the § 214 carryover or the extended period for incurring claims permitted by § 214(c)(1) of the Act, the annual limits under §§ 125(i) and 129(a) apply to amounts contributed to a health FSA or dependent care assistance program for a particular year, and not to amounts reimbursed or otherwise available for reimbursement from a health FSA or dependent care assistance program in a particular plan or calendar year. Thus, unused amounts carried over from prior years or available during an extended period for incurring claims are not taken into account in determining the annual limit applicable for the following year.

C. Section 9632 of the American Rescue Plan Act of 2021 – Increase of Benefit Limit under § 129 of the Code to \$10,500 for Taxable Year Beginning after December 31, 2020, and before January 1, 2022

Section 9632 of the American Rescue Plan Act of 2021 (ARP), Pub. L. 117-2, 135 Stat. 4 (March 11, 2021), increases the exclusion for employer-provided dependent care under § 129 to \$10,500 (half that amount in the case of a married individual filing separately) with respect to any taxable year beginning after December 31, 2020, and before January 1, 2022. Section 9632(c) of the ARP provides that a DCAP generally may be amended retroactively to increase the contribution allowed under the plan if (1) the amendment is adopted no later than the last day of the plan year in which the amendment is effective, and (2) the plan is operated consistent with the terms of the amendment during the period beginning on the effective date of the amendment and ending on the date the amendment is adopted.

¹ Under §§ 3121(a)(18) and 3401(a)(18), any payment made or benefit furnished to an employee is excluded from wages if at the time of the payment or furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under § 129.

Section 9632 of the ARP increases the exclusion for employer-provided dependent care under § 129 to \$10,500 (half that amount in the case of a married individual filing separately) for the individual's 2021 taxable year (not the plan year). Accordingly, in the case of a DCAP offered by a § 125 cafeteria plan with a non-calendar plan year beginning in 2021 and ending in 2022, the increased exclusion amount will not apply to reimbursement of expenses incurred during the 2022 portion of the plan year. Thus, reimbursement of more than \$5,000 from the DCAP may result in a portion of the employee's contribution to the DCAP for the 2021 plan year that is used to reimburse expenses incurred during the 2022 taxable year becoming taxable upon reimbursement. Also, unused DCAP benefits from one taxable year of the participant (typically the calendar year) used to reimburse expenses incurred in the immediately following taxable year, where the expenses are incurred during the same non-calendar plan year spanning those two taxable years, are not carryover benefits or benefits made available under an extended claims period. Accordingly, the guidance provided in this notice does not apply to these benefits.

GUIDANCE – TREATMENT OF UNUSED BENEFITS MADE AVAILABLE IN 2021 OR 2022 DUE TO A CARRYOVER OR EXTENDED CLAIMS PERIOD

Notice 2021-15 states that in applying the temporary ability to carry over amounts or extend claims periods under § 214 of the Act, unused amounts carried over from prior years or available during an extended period for incurring claims are not taken into account in determining the annual limit applicable for the following year. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have concluded that inherent in the legislation temporarily permitting unused amounts to be carried over to 2021 or 2022, or made available under an extended claims period, is that amounts that continue to be available are excluded from income if used by the participant for dependent care benefits. Consequently, this notice clarifies that DCAP benefits that would have been excluded

from income if used during the taxable year ending in 2020 or 2021, as applicable, remain eligible for exclusion from the participant's gross income and are disregarded for purposes of application of the limits for the subsequent taxable years of the employee when they are carried over from a plan year ending in 2020 or 2021 or permitted to be used pursuant to an extended claims period. This notice also provides examples illustrating the possible tax consequences of electing \$10,500 in DCAP benefits for a plan year beginning in 2021 but ending in 2022.

In the following examples, the employee's taxable year is the calendar year and the employee is not a married individual filing separately. The DCAP and the § 125 cafeteria plan comply with all applicable statutory requirements in effect as of the date this notice is published (including applicable nondiscrimination requirements) for all relevant periods. Consistent with current law, the examples assume that the § 129 exclusion for the 2022 taxable year reverts to \$5,000.

EXAMPLE 1: An employee is covered by a calendar year § 125 cafeteria plan that offers a DCAP benefit. The employee elects no DCAP benefits for the 2019 plan year. The employee elects to contribute \$5,000 for DCAP benefits for the 2020 plan year but incurs no dependent care expenses during the plan year. Pursuant to § 214 of the Act, the § 125 cafeteria plan allows the employee to carry over the unused \$5,000 of DCAP benefits to the 2021 plan year. The employee elects to contribute \$10,500 for DCAP benefits for the 2021 plan year.

The employee incurs \$15,500 in dependent care expenses in 2021 and is reimbursed \$15,500 by the DCAP. The \$15,500 is excluded from the employee's gross income and wages because \$10,500 is excluded as 2021 benefits and the remaining \$5,000 is attributable to a carryover permitted under § 214 of the Act.

EXAMPLE 2: An employee is covered by a non-calendar year § 125 cafeteria plan that offers a DCAP benefit. The § 125 cafeteria plan has a July 1 to June 30 plan year. The employee elects no DCAP benefits for the plan year beginning July 1, 2019. For the plan year beginning July 1, 2020, the employee elects to contribute \$5,000 for DCAP benefits, but the employee incurs no dependent care expenses during the plan year. Pursuant to § 214 of the Act, the § 125 cafeteria plan allows the employee to carry over the unused \$5,000 of DCAP benefits to the plan year beginning July 1, 2021.

Taxable Year 2021 – Facts and Conclusion. Pursuant to § 9632 of the ARP, the employee elects to contribute \$10,500 for DCAP benefits for the plan year beginning July 1, 2021. The employee has \$15,500 available for dependent care expenses for the plan year beginning July 1, 2021. The employee incurs no dependent care expenses during the period

from July 1, 2021, to December 31, 2021, and has \$15,500 of DCAP benefits available as of January 1, 2022. For the taxable year 2021, the employee did not receive any DCAP benefits because no dependent care expenses eligible for reimbursement under the DCAP were incurred in 2021.

Taxable Year 2022 – Facts and Conclusion. For the taxable year 2022, the exclusion for DCAP benefits under § 129 of the Code is \$5,000. The employee incurs \$7,000 in dependent care expenses during the period from January 1, 2022, through June 30, 2022, and is reimbursed \$7,000 by the DCAP. The § 125 cafeteria plan adopts a 2½ month grace period that is added to the end of the plan year beginning July 1, 2021, which allows the employee to use the unused \$8,500 of DCAP benefits until September 15, 2022. The employee elects to contribute \$5,000 for DCAP benefits for the plan year beginning July 1, 2022. The employee incurs \$8,500 in dependent care expenses during the period from July 1, 2022, through September 15, 2022, and incurs \$2,500 in dependent care expenses during the period from September 15, 2022, through December 31, 2022. The employee is reimbursed \$11,000 by the DCAP (\$8,500 plus \$2,500). The employee therefore receives \$18,000 (\$7,000 plus \$11,000) in reimbursements of dependent care expenses during the 2022 taxable year. Of the \$18,000 received in calendar year 2022, \$10,000 is excluded from the employee's gross income and wages because \$5,000 is excluded under the exclusion for DCAP benefits under § 129 of the Code for the taxable year 2022, and \$5,000 of the \$7,000 received from January 1, 2022, to June 30, 2022, is excluded because it is attributable to carryovers permitted under § 214 of the Act that would have been excluded from gross income if used in the preceding taxable year (that is, attributable to carryovers to plan years ending before 2023). The remaining \$8,000 is included in the employee's gross income and wages because it is not attributable to carryovers permitted under § 214 of the Act.

EXAMPLE 3: An employee is covered by a non-calendar year § 125 cafeteria plan that offers a DCAP benefit. The § 125 cafeteria plan has a July 1 to June 30 plan year. The employee elects no DCAP benefits for the plan year beginning July 1, 2020, and there are no unused amounts from prior plan years available.

Taxable Year 2021 – Facts and Conclusion. Pursuant to § 9632 of the ARP, the employee elects to contribute \$10,500 for DCAP benefits for the plan year beginning July 1, 2021. The employee incurs \$5,000 in dependent care expenses during the period from July 1, 2021, to December 31, 2021, and receives \$5,000 in reimbursements during 2021. The \$5,000 is excluded from the employee's gross income and wages pursuant to § 129 of the Code. The employee has \$5,500 of DCAP benefits available as of January 1, 2022.

Taxable Year 2022 – Facts and Conclusion. For the taxable year 2022, the exclusion for DCAP benefits under § 129 of the Code is \$5,000. The employee incurs \$5,500 in dependent care expenses during the period from January 1, 2022, through June 30, 2022, and is reimbursed \$5,500 by the DCAP. The employee elects to contribute \$5,000 for DCAP benefits for the plan year beginning July 1, 2022. The employee incurs \$2,500 in dependent

care expenses during the period from July 1, 2022, to December 31, 2022, and is reimbursed \$2,500 by the DCAP. The employee receives a total of \$8,000 in reimbursements for DCAP benefits during 2022. Of the \$8,000 received in the 2022 taxable year, \$5,000 is excluded from the employee's gross income and wages under the exclusion for DCAP benefits under § 129 of the Code. The remaining \$3,000 received by the employee is included in the employee's gross income and wages.

EFFECT ON OTHER DOCUMENTS

This notice clarifies the application of Notice 2021-15.

DRAFTING INFORMATION

The principal author of this notice is Jennifer Solomon of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), though other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact Jennifer Solomon at (202) 317-5500 (not a toll-free number).

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2021

Notice 2021-32

This notice publishes the inflation adjustment factors and reference prices for calendar year 2021 for the renewable electricity production credit, the refined coal production credit, and the Indian coal production credit under section 45 of the Internal Revenue Code. The 2021 inflation adjustment factors and reference prices are used in determining the availability of the credits and apply to calendar year 2021 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to calendar year 2021 sales of

refined coal and Indian coal produced in the United States or a possession thereof.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under section 45(a) is reduced by an amount which bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to (B) 3 cents. Under section 45(b)(2), the 1.5 cent amount in section 45(a), the 8 cent amount in section 45(b)(1), the \$4.375 amount in section 45(e)(8)(A), and, in section 45(e)(8)(B)(i), the reference price of fuel used as feedstock (within the meaning of section 45(c)(7)(A)) in 2002, are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, the amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half.

Section 45(b)(5) provides that in the case of any facility using wind to produce electricity, the amount of the credit determined under section 45(a) (determined after the application of section 45(b)(1), (2), and (3) and without regard to section 45(b)(5)) shall be reduced by (A) in the case of any facility the construction of which begins after December 31, 2016, and before January 1, 2018, 20 percent, (B) in the case of any facility the construction of

which begins after December 31, 2017, and before January 1, 2019, 40 percent, (C) in the case of any facility the construction of which begins after December 31, 2018, and before January 1, 2020, 60 percent, and (D) in the case of any facility the construction of which begins after December 31, 2019, and before January 1, 2022, 40 percent.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy.

Section 45(d)(1) defines a qualified facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and the construction of which begins before January 1, 2022. See section 45(e)(7) for rules relating to the inapplicability of the credit to electricity sold to utilities under certain contracts.

Section 45(d)(2)(A) defines a qualified facility using closed-loop biomass to produce electricity as any facility (i) owned by the taxpayer that is originally placed in service after December 31, 1992, and the construction of which begins before January 1, 2022, or (ii) owned by the taxpayer which before January 1, 2022 is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 FR 63052. For purposes of section 45(d)(2)(A)(ii), a facility shall be treated as modified before January 1, 2022, if the construction of such modification begins before such date. Section 45(d)(2)(C) provides that in the case of a qualified facility described in section 45(d)(2)(A)(ii), (i) the 10-year period referred to in section 45(a) is treated as beginning no earlier than the date of the enactment of section 45(d)(2)(C)(i) (October 22, 2004), and (ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under section 45(a) is the lessee or the operator of such facility. A qualified facility using closed-loop biomass includes a new unit placed in service after the date of the en-

actment of section 45(d)(2)(B) (October 3, 2008) in connection with a qualified facility using closed-loop biomass, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(3)(A) defines a qualified facility using open-loop biomass to produce electricity as any facility owned by the taxpayer which (i) in the case of a facility using agricultural livestock waste nutrients, (I) is originally placed in service after the date of the enactment of section 45(d)(3)(A)(i)(I) (October 22, 2004) and the construction of which begins before January 1, 2022, and (II) the nameplate capacity rating of which is not less than 150 kilowatts, and (ii) in the case of any other facility, the construction of which begins before January 1, 2022. In the case of any facility described in section 45(d)(3)(A), if the owner of such facility is not the producer of the electricity, section 45(d)(3)(C) provides that the person eligible for the credit allowable under section 45(a) is the lessee or the operator of such facility. A qualified facility using open-loop biomass includes a new unit placed in service after the date of the enactment of section 45(d)(3)(B) (October 3, 2008) in connection with a qualified facility using open-loop biomass, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(4) defines a qualified facility using geothermal energy to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(4) (October 22, 2004) and the construction of which begins before January 1, 2022. A qualified facility using geothermal energy does not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

Section 45(d)(6) defines a qualified facility using gas derived from the biodegradation of municipal solid waste to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(6) (October 22, 2004) and the construction of which begins before January 1, 2022.

Section 45(d)(7) defines a qualified facility (other than a facility described in section 45(d)(6)) that uses municipal solid waste to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(7) (October 22, 2004) and the construction of which begins before January 1, 2022. A qualified facility using municipal solid waste includes a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of section 45(d)(7), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(8) provides, in the case of a facility that produces refined coal (other than a facility producing steel industry fuel), the term “refined coal production facility” means any facility producing refined coal placed in service after the date of the enactment of the American Jobs Creation Act of 2004 (October 22, 2004) and before January 1, 2012.

Section 45(d)(9) defines a qualified facility producing qualified hydroelectric production described in section 45(c)(8) as (i) any facility producing incremental hydropower production, but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after the date of the enactment of section 45(d)(9) (August 8, 2005) and before January 1, 2022, and (ii) any other facility placed in service after the date of the enactment of section 45(d)(9) (August 8, 2005) and the construction of which begins before January 1, 2022. Section 45(d)(9)(B) provides that, in the case of a qualified facility described in section 45(d)(9)(A), the 10-year period referred to in section 45(a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service. Section 45(d)(9)(C) provides that for purposes of section 45(d)(9)(A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2022 if the construction of such improvement or addition begins before such date.

Section 45(d)(10) provides that the term “Indian Coal Production Facility” means a facility that produces Indian coal.

Section 45(d)(11) provides in the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term “qualified facility” means any facility owned by the taxpayer which (A) has a nameplate capacity rating of at least 150 kilowatts, and (B) is originally placed in service on or after the date of the enactment of section 45(d)(11) (October 3, 2008) and the construction of which begins before January 1, 2022.

Section 45(e)(8)(A) provides that the refined coal production credit is an amount equal to \$4.375 per ton of qualified refined coal (i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer (I) to an unrelated person and (II) during such 10-year period and the tax year. Section 45(e)(8)(B) provides that the amount of credit determined under section 45(e)(8)(A) is reduced by an amount which bears the same ratio to the amount of the increase as (i) the amount by which the reference price of fuel used as feedstock (within the meaning of section 45(c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to (ii) \$8.75.

Section 45(e)(10)(A) provides in the case of a producer of Indian coal, the credit determined under section 45 for any taxable year is an amount equal to the applicable dollar amount per ton of Indian coal (i) produced by the taxpayer at an Indian coal production facility during the 16-year period beginning on January 1, 2006, and (ii) sold by the taxpayer (I) to an unrelated person, and (II) during such 16-year period and such taxable year.

Section 45(e)(10)(B)(i) defines “applicable dollar amount” for any taxable year as (I) \$1.50 in the case of calendar years 2006 through 2009, and (II) \$2.00 in the case of calendar years beginning after 2009.

Section 45(e)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factors and the reference prices for such calendar year. The inflation adjustment factors and the reference prices for the 2021 calendar year were published in the Federal Register at 86 FR 22300 on April 27, 2021.

Section 45(e)(2)(B) defines the inflation adjustment factor for a calendar year as a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term “GDP implicit price deflator” means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Under section 45(e)(10)(B)(ii), in the case of any calendar year after 2006, each of the dollar amounts under section 45(e)(10)(B)(i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under section 45(e)(2)(B) for the calendar year, except that section 45(e)(2)(B) shall be applied by substituting 2005 for 1992.

Section 45(e)(2)(C) provides that the reference price is the Secretary’s determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989 are taken into account.

Under section 45(e)(8)(C), the determination of the reference price for fuel used as feedstock within the meaning of section 45(c)(7)(A) is made according to rules similar to the rules under section 45(e)(2)(C).

INFLATION ADJUSTMENT FACTORS AND REFERENCE PRICES

The inflation adjustment factor for calendar year 2021 for qualified energy resources and refined coal is 1.6878. The inflation adjustment factor for calendar year 2021 for Indian coal is 1.2998.

The reference price for calendar year 2021 for facilities producing electricity from wind (based upon information provided by the Department of Energy) is 3.59 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A), relating to refined coal production (based upon information provided by the Department of Energy) are \$31.90 per ton for calendar year 2002 and \$45.64 per ton for

calendar year 2021. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy have not been determined for calendar year 2021.

PHASEOUT CALCULATION

Because the 2021 reference price for electricity produced from wind (3.59 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment factor (1.6878), the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2021. However, refer to section 45(b)(5) for an additional phaseout of the credit for wind facilities the construction of which begins after December 31, 2016. Because the 2021 reference price of fuel used as feedstock for refined coal (\$45.64) does not exceed \$91.53 (which is the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor (1.6878) and 1.7), the phaseout of the credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2021. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2021.

CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY, REFINED COAL, AND INDIAN COAL

As required by section 45(b)(2), the 1.5 cent amount in section 45(a)(1), and the \$4.375 amount in section 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and

marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2021 under section 45(a) is 2.5 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.3 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2021 under section 45(e)(8)(A) is \$7.384 per ton on the sale of qualified refined coal.

As required by section 45(e)(10)(B)(ii), the \$2.00 amount in section 45(e)(10)(B)(i) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year. Under the calculation required by section 45(e)(10)(B)(ii), the credit for Indian coal production for calendar year 2021 under section 45(e)(10)(B) is \$2.600 per ton on the sale of Indian coal.

DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Charles Hyde of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Hyde at (202) 317-6853 (not a toll-free number).

*26 CFR 601.602: Tax forms and instructions.
(Also Part I, §§ 1, 223; Part III § 54.9831-1.)*

Rev. Proc. 2021-25

SECTION 1. PURPOSE

This revenue procedure provides the 2022 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted ben-

efit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Pension Excise Tax Regulations.

SECTION 2. 2022 INFLATION ADJUSTED ITEMS

.01 HSA INFLATION ADJUSTED ITEMS

Annual contribution limitation. For calendar year 2022, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is \$3,650. For calendar year 2022, the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is \$7,300.

High deductible health plan. For calendar year 2022, a “high deductible health plan” is defined under § 223(c)(2)(A) as a

health plan with an annual deductible that is not less than \$1,400 for self-only coverage or \$2,800 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed \$7,050 for self-only coverage or \$14,100 for family coverage.

.02 HRA INFLATION ADJUSTED ITEM

For plan years beginning in 2022, the maximum amount that may be made newly available for the plan year for an excepted benefit HRA under § 54.9831-1(c)(3)(viii) is \$1,800. See § 54.9831-1(c)(3)(viii)(B)(1) for further explanation of this calculation.

SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for HSAs for calendar year 2022 and for ex-

cepted benefits HRAs for plan years beginning in 2022.

SECTION 4. DRAFTING INFORMATION

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

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2020.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2020.

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

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