

Part III. Administrative, Procedural, and Miscellaneous

Notice Regarding Certain Church Plan Clarifications under Section 336 of the PATH Act

Notice 2018–81

I. PURPOSE

This notice describes the manner in which taxpayers notify the Internal Revenue Service (IRS) of revocation of an election to aggregate or disaggregate certain church-related organizations from treatment as a single employer under section 414(c)(2)(C) and (D). Churches and church-related organizations are allowed to make elections to aggregate or disaggregate for this purpose under section 414(c)(2)(C) and (D), which were added to the Code by section 336(a) of the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114–113 (129 Stat. 2242 (2015))) (PATH Act). This notice also requests comments with respect to potential guidance on certain other issues raised by PATH Act provisions related to church plans.

II. BACKGROUND

Section 414(c) generally provides that employees of employers that are members of a group under common control are treated as employed by a single employer. Section 414(c) is used in determining, among other requirements, whether a retirement plan complies with applicable nondiscrimination requirements. Section 336(a) of the PATH Act amended section 414(c) by adding a new section 414(c)(2). Under section 414(c)(2)(C) and (D), an election may be made to aggregate or disaggregate certain church-related organizations, respectively, for purposes of treatment as a single employer under section 414(c). Under these provisions, the “election, once made, shall apply to all succeeding plan years unless revoked with notice provided to the Secretary in such manner as the Secretary shall prescribe.” However, the provisions do not require that the Secretary be notified of any election under section 414(c)(2).

III. PROVIDING NOTICE OF REVOCATION OF ELECTION TO AGGREGATE OR DISAGGREGATE

The PATH Act does not prescribe specific rules for making or revoking elections under section 414(c)(2)(C) or (D), other than requiring that the IRS be notified of the revocation of an election. Therefore, for purposes of section 414(c)(2)(C) and (D), the generally applicable substantiation and recordkeeping requirements of section 6001, including requirements described in Rev. Proc. 98–25 (1998–1 CB 689), apply. Accordingly, to satisfy the statutory requirement that notice be provided to the IRS if an election made under section 414(c)(2)(C) or (D) is subsequently revoked, the entity authorized to revoke the election must provide a copy of the revocation upon request by the IRS.

IV. EFFECTIVE DATE

This notice is effective for revocations of elections under section 414(c)(2)(C) or (D) made on or after October 22, 2018. Before October 22, 2018, any reasonable method of notifying the Secretary regarding revocations of elections under section 414(c)(2)(C) or (D) is acceptable, including the generally applicable substantiation and recordkeeping requirements of section 6001 that would satisfy Section III of this notice.

V. COMMENTS REQUESTED REGARDING POTENTIAL ADDITIONAL GUIDANCE

The Department of the Treasury and the IRS request comments on whether additional guidance under section 336 of the PATH Act would be helpful. Send submissions to CC:PA:LPD:PR, (Notice 2018–81), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (Notice 2018–81), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at

notice.comments@irs.counsel.treas.gov (Notice 2018–81). Please submit written comments by December 21, 2018. All comments will be available for public inspection.

VI. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has 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 1545-2279.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in section III. This information is required to revoke an election to aggregate or disaggregate certain organizations under section 414(c)(2)(C) or (D). The collection of information is mandatory if such an election is revoked. The likely respondents are sponsors of church plans.

The estimated total annual reporting burden is 6.1 hours. The estimated annual burden per respondent is approximately 2 hours. The estimated number of respondents is 31. The estimated annual frequency of responses is 3.

Books or records relating to a collection of information must be retained as long as their contents may become relevant to the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

VII. DRAFTING INFORMATION

The principal author of this notice is Jeremy D. Lamb of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Lamb at (202) 317-6799 (not a toll-free number).