consideration in money or money’s worth.

(B) Example. The following example illustrates the application of this paragraph (c)(2)(v):

Example. Employer T operates a restaurant. T provides food and beverages to its food service employees before, during, and after their shifts for no consideration. Under section 274(e)(8) and this paragraph (c)(2)(v), the expenses associated with the food and beverages provided to the employees are not subject to the 50 percent deduction limitation in paragraph (a) of this section because the restaurant sells food and beverages to customers in a bona fide transaction for an adequate and full consideration in money or money’s worth. Thus, T may deduct 100 percent of the food and beverage expenses.

(d) Applicability date. This section applies for taxable years that begin on or after October 9, 2020.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.


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

FOR FURTHER INFORMATION CONTACT:

[25x20]VerDate Sep<11>2014 16:35 Oct 08, 2020 Jkt 253001 PO 00000 Frm 00048 Fmt 4700 Sfmt 4700 E:\FR\FM\09OCR1.SGM 09OCR1

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9902) that are the subject of this correction are issued under section 951A of the Code.

Need for Correction

As published, the final regulations (TD 9902) contain errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

Paragraph 2. Section 1.951A–2 is amended by adding a sentence at the end of paragraph (c)(7)(viii)(E)(2)(ii) to read as follows:

§ 1.951A–2 Tested Income and tested loss.

(c) * * * * * (7) * * * (viii) * * * (E) * * * (2) * * * (ii) * * * Notwithstanding the rule set forth in this paragraph (c)(7)(viii)(E)(2)(ii), a controlled foreign corporation is not a member of a CFC group if, as of the close of its CFC inclusion year, the controlled foreign corporation does not have a controlling domestic shareholder.

Crystal Pemberton,
Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–20419 Filed 10–8–20; 8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9902]

RIN 1545–BP15

Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9902, which was published in the Federal Register on Thursday, July 23, 2020. Treasury Decision 9902 contained final regulations under the global intangible low-taxed income and subpart F income provisions of the Internal Revenue Code regarding the treatment of income that is subject to a high rate of foreign tax.

DATES: This correction is effective on October 9, 2020.

FOR FURTHER INFORMATION CONTACT:

Jorge M. Oben or Larry R. Pounders at (202) 317–6934 (not a toll-free number).
to these statutory changes by adding the other things, to amend part 1 to conform on December 13, 2019 through 1.499 is release of information through 1.489. The focus of §§ 1.490 consent are addressed in §§ 1.483 disclosures that do not require patient consent are addressed in §§ 1.475 through 1.479, while §§ 1.460 through 1.499 of this part. Disclosure contains the definitions for §§ 1.460 sickle cell anemia are at 38 CFR 1.460 from VA records protected by one or more confidentiality provisions in 38 United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act. VA has published regulations implementing release of information from VA records protected by one or more confidentiality provisions in 38 CFR part 1. General rules on release of information related to alcohol or other drug use disorder, HIV infection, or sickle cell anemia are at 38 CFR 1.460 through 1.479. In particular, § 1.460 contains the definitions for §§ 1.460 through 1.499 of this part. Disclosure with patient consent is addressed in §§ 1.475 through 1.479, while disclosures that do not require patient consent are addressed in §§ 1.483 through 1.489. The focus of §§ 1.490 through 1.499 is release of information in response to a court order. In a document published in the Federal Register on December 13, 2019 (84 FR 68065), VA proposed, among other things, to amend part 1 to conform to these statutory changes by adding the terms health care and health care related activities or functions to § 1.460; and adding two new sections at 38 CFR 1.481 and 1.482 titled Disclosure of medical records of veterans who receive non-VA health care, and Disclosure of medical records to recover or collect reasonable charges, respectively. Furthermore, we proposed a technical correction to §§ 1.460 through 1.499 by moving the authority citations for these sections and moving them to the beginning of part 1 to comply with the Office of Federal Register direction that statutory authorities should be listed in the introductory portion of each CFR part.

VA provided a 60-day comment period that ended February 11, 2020, and we received two comments. The first comment stated that VA should obtain permission from veterans and that every effort should be made to contact a veteran’s family for the release of records if the veteran is deceased (we note that, although the comment used the word decided, based on the content of the comment, we believe that the intended word was deceased). To address the first portion of the comment related to obtaining permission from veterans, as previously explained, section 3 of Public Law 115–26 and section 132 of the VA MISSION Act of 2018, amended 38 U.S.C. 7332(b)(2) by allowing VA to disclose certain protected records to non-VA entities (including private entities and other Federal agencies) for purposes of providing health care or performing other health care-related activities or functions. Also, VA may disclose these protected records to a third party for the purpose of recovering or collecting reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by section 1729 of this title, or for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act.

VA has published regulations authorizing disclosure to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by section 1729 of this title, or for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act.

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commenter because the restriction that is already present in § 1.418(b) as proposed captures all entity types to include health information exchanges or organizations when applicable. We are not making any changes based on this portion of the comment.

3. Restriction requests. The comment raised a concern that the proposed rule did not address requests for restrictions on the disclosure of medical records under the HIPAA Privacy Rule, and specifically, restrictions with regard to information sharing through a health information exchange. The comment addressed both the issues of restriction on the use and disclosure of protected health information, and the means under which protected health information is shared. To address both issues raised in the comment, we first note that the purpose of the proposed rule and this final rule is to align VA’s regulations with recent changes in law that now authorize VA to disclose 7332-protected records to a third party for the purpose of providing health care or performing other health care-related activities or functions, and to a third party for the purpose of recovering or collecting reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability or to which the United States is deemed to be a third-party beneficiary. This authority does not negate an individual’s ability to request a restriction on the use and disclosure of their protected health information under 45 CFR 164.522, nor does it negate VA’s obligation to uphold a request if VA agrees to a restriction. We note that under the HIPAA Privacy Rule, VA may still use or disclose restricted protected health information for emergency treatment. 45 CFR 164.522(a)(1)(iii). Additionally, under the HIPAA Privacy Rule a covered entity is not required to agree to a restriction unless the disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law and the protected health information pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the covered entity in full. 45 CFR 164.522(a)(1)(ii) and (vi). Thus, this final rule does not affect an individual’s ability to request restrictions on the disclosure of medical records. We next clarify this final rule does not impede an individual’s ability to opt-out of health information exchanges. It provides individuals the opportunity to opt-out of sharing protected health information through health information exchanges (HIE). Therefore, if an individual chooses to opt-out, VA will uphold this request by not sharing protected health information through an HIE. However, protected health information will continue to be shared on paper, fax, or other legally allowed means. We are not making any changes based on this portion of the comment.

4. The Privacy Act. The comment asked if the Privacy Act applies to medical records and whether the routine use exemption applies. We clarify that this rule does not impact protections under the Privacy Act because VA is authorized to disclose 7332-protected records without consent under routine use when such disclosure is authorized by 38 U.S.C. 7332. The Privacy Act requires Federal agencies to not disclose any record which is contained in a system of records . . . without the prior written consent of, the individual to whom the record pertains, unless the disclosure of the record would be . . . for routine use. 5 U.S.C. 552a(b) and (b)(3). Routine use, with respect to the disclosure of records, means the use of such record for a purpose which is compatible with the purpose for which it was collected. 5 U.S.C. 552a(a)(7). In accordance with 5 U.S.C. 552a(e), VA publishes a Federal Register Notice outlining the routine use disclosures of records from a Privacy Act system of records to a person or entity outside of VA without the prior signed written consent authorization of the individual who is the subject of the information. For example, published routine use disclosure statements in the Privacy Act system of records, “Patient Medical Records-VA”. 24VA10P2 permits the release of protected health information when a disclosure is also authorized by other applicable legal authorities, including the HIPAA Privacy Rule; and disclosure of 7332-protected records when the disclosure is also authorized by 38 U.S.C. 7332. Furthermore, this rule aligns VA’s regulations with recent changes in our statutory authority under 7332. We are not making any changes based on this portion of the comment.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the proposed rule as final without changes.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act


Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect health and medical insurance companies, some of which are small entities. VA has determined that this final rule will not have a significant economic impact because VA estimates the cost of this rulemaking to be no more than 1 percent of average annual receipts, and thus not significant. In the proposed rule, VA estimated the cost of this rulemaking to be $41.7 per year using FY2020 estimates. VA now estimates the cost of this rulemaking to be $43.8 million per year using FY2021 estimates for health and medical insurance carriers due to an increase in potential revenue received by VA from health and medical insurance firms for billed claims. This $43.8 million dollars per year will be distributed among 815, of which 312 are small, medical and health insurance firms that provide benefits to veterans treated for non-service connected conditions and whose records are protected under 38 U.S.C. 7332. We are uncertain if any small entity will be impacted so we assume that all small entities will be impacted in addition to large entities. The cost to each of the 312 small entities will be $53,779 per year, which is 1 percent of average annual receipts for the smallest potentially affected small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of
Information and Regulatory Affairs has determined this rule is not a significant regulatory action under Executive Order 12866.

VA’s impact analysis can be found as a supporting document at http://www.regulations.gov, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s website at http://www.va.gov/orpm by following the link for VA Regulations Published from FY 2004 through FYTD.

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008—Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.033—VA Supportive Services for Veteran Families Program; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care; 64.054—Research and Development.

List of Subjects in 38 CFR Part 1


Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on August 26, 2020, for publication.

Consuela Benjamin, Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, Department of Veterans Affairs amends 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

§ 1.460 Definitions.

(a) The term “health care” has the same meaning as provided in 45 CFR 164.103.

Health care-related activities or functions. The term “health care-related activities or functions” means the actions required for the delivery of health care, including hospital care, medical services, and extended care services. Health care-related activities or functions includes: Treatment as defined by 45 CFR 164.501; activities related to reimbursement for care and treatment by a health care provider; activities related to participation in health information exchanges for the delivery of health care; health care operations as defined by 45 CFR 164.501; and activities related to a patient’s exercise of privacy rights regarding health information.

(b) An entity to which a record is disclosed under this section may not disclose or use such record for a purpose other than that for which the disclosure was made or as permitted by law.

§ 1.482 Disclosure of medical records to recover or collect reasonable charges.

VA may disclose records described in 38 U.S.C. 7332(a) to a third party in order to recover or collect reasonable charges for care furnished to, or paid on behalf of, a patient in connection with a non-service connected disability as permitted by 38 U.S.C. 1729, or for a condition for which recovery is authorized, or with respect to which the United States is deemed to be a third-party beneficiary under the Federal Medical Care Recovery Act (Public Law 87–693, 42 U.S.C. 2651 et seq.).