

to those costs attributable to the adjustments at issue at the time the last qualified offer was made that were included in the court's judgment other than by reason of settlement. The qualified offer rule is inapplicable to reasonable administrative or litigation costs otherwise awarded to a taxpayer who is a prevailing party under any other provision of section 7430(c)(4). This section sets forth the requirements to be satisfied for a taxpayer to be treated as a prevailing party by reason of the taxpayer making a qualified offer, as well as the circumstances leading to the application of the exceptions, special rules, and coordination provisions of the qualified offer rule. Furthermore, this section sets forth the elements necessary for an offer to be treated as a qualified offer under section 7430(g).

(b) *Requirements for treatment as a prevailing party based upon having made a qualified offer*—(1) *In general.* In order to be treated as a prevailing party by reason of having made a qualified offer, the liability of the taxpayer for the type or types of tax and the taxable year or years at issue in the proceeding (as calculated pursuant to paragraph (b)(2) of this section), based on the last qualified offer (as defined in paragraph (c) of this section) made by the taxpayer in the court or administrative proceeding, must equal or exceed the liability of the taxpayer pursuant to the judgment by the court for the same type or types of tax and the same taxable year or years (as calculated pursuant to paragraph (b)(3) of this section). Furthermore, the taxpayer must meet the timely filing and net worth requirements of section 7430(c)(4)(A)(ii). If all of the adjustments subject to the last qualified offer are settled prior to the entry of the judgment by the court, the taxpayer is not a prevailing party by reason of having made a qualified offer. The taxpayer may, however, still qualify as a prevailing party if the requirements of section 7430(c)(4)(A) are met. If one or more adjustments covered by a qualified offer (see paragraph (c)(3)) are settled following a ruling by the court that substantially resolves those adjustments, then those adjustments will not be treated as having been settled prior to the entry of the judgment by the court and instead will be treated as amounts included in the judgment as a result of the court's determinations. For purposes of the preceding sentence, rulings relating to discovery, admissibility of evidence, and burden of proof are not rulings that substantially

resolve adjustments covered by a qualified offer.

(2) *Liability under the last qualified offer.* For purposes of paragraph (b)(1) of this section, the taxpayer's liability under the last qualified offer is the change in the taxpayer's liability that would have resulted if the United States had accepted the taxpayer's last qualified offer on all of the adjustments that were at issue in the administrative or court proceeding at the time that the offer was made compared to the amount shown on the return or returns (or as previously adjusted). The portion of a taxpayer's liability that is attributable to adjustments raised by either party after the making of the last qualified offer is not included in the calculation of the liability under that offer. The taxpayer's liability under the last qualified offer is calculated without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding. For example, the parties may stipulate that the taxpayer's liability will be resolved in accordance with the outcome of an alternative dispute resolution proceeding or a separate court proceeding, such as a probate, tort liability, or trademark action. Furthermore, the taxpayer's liability under the last qualified offer is calculated without regard to interest, unless the taxpayer's liability for, or entitlement to, interest is a contested issue in the administrative or court proceeding and is one of the adjustments included in the last qualified offer.

(3) *Liability pursuant to the judgment.* For purposes of paragraph (b)(1) of this section, the taxpayer's liability pursuant to the judgment is the change in the taxpayer's liability resulting from amounts contained in the judgment as a result of the court's determinations, and amounts contained in settlements not included in the judgment, that are attributable to all adjustments that were included in the last qualified offer compared to the amount shown on the return or returns (or as previously adjusted). This liability includes amounts attributable to adjustments included in the last qualified offer and settled by the parties prior to the entry of judgment regardless of whether those amounts are actually included in the judgment entered by the court. The taxpayer's liability pursuant to the judgment does not include amounts attributable to adjustments that are not included in the last qualified offer, even if those amounts are actually included in the judgment entered by the court.

The taxpayer's liability under the judgment is calculated without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding. Furthermore, the taxpayer's liability pursuant to the judgment is calculated without regard to interest, unless the taxpayer's liability for, or entitlement to, interest is a contested issue in the administrative or court proceeding and is one of the adjustments included in the last qualified offer. Where adjustments raised by either party subsequent to the making of the last qualified offer are included in the judgment entered by the court, or are settled prior to the court proceeding, the taxpayer's liability pursuant to the judgment is calculated by treating the subsequently raised adjustments as if they had never been raised.

(c) *Qualified offer*—(1) *In general.* A qualified offer is defined in section 7430(g) to mean a written offer which—

(i) Is made by the taxpayer to the United States during the qualified offer period;

(ii) Specifies the offered amount of the taxpayer's liability (determined without regard to interest, unless interest is a contested issue in the proceeding);

(iii) Is designated at the time it is made as a qualified offer for purposes of section 7430(g); and

(iv) By its terms, remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

(2) *To the United States.* (i) A qualified offer is made to the United States when it is delivered to the office or personnel within the Internal Revenue Service, Office of Appeals, Office of Chief Counsel (including field personnel) or Department of Justice that has jurisdiction over the tax matter at issue in the administrative or court proceeding. If those offices or persons are unknown to the taxpayer making the qualified offer, the taxpayer may deliver the offer to the appropriate office, as follows:

(A) If the taxpayer's initial pleading in a court proceeding has been answered, the taxpayer may deliver the offer to the office that filed the answer.

(B) If the taxpayer's petition in the Tax Court has not yet been answered, the taxpayer may deliver the offer to the Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

(C) If the taxpayer's initial pleading in any Federal court, other than the Tax