

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Guidance Necessary to Facilitate Business Electronic Filing

REG-116664-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9100) designed to eliminate regulatory impediments to the electronic filing of certain business income tax returns and other forms. Those regulations affect business taxpayers who file income tax returns electronically. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 19, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-116664-01), room 5203, Internal Revenue Service, POB 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-116664-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Nathan Rosen (202) 622-4910; concerning submissions of comments and/or requests for a hearing, Robin Jones (202) 622-3521 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 17, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.170A-11T. Section 170 of the Code permits tax deductions, within limits, for charitable contributions by individuals and corporations. Section 170(a)(2) provides that under certain conditions, corporations may treat a charitable contribution as paid during the taxable year even if the contribution occurs in the following taxable year. Existing regulations provide that to invoke this pro-

vision, a corporation must submit with its income tax return a supporting statement and a copy of the board of directors' resolution authorizing the contribution. The proposed regulation eliminates the need to submit the resolution with the return, but provides that the supporting statement must identify the date of the resolution. This information regarding the timing of board action is required to be reported to help ensure that taxpayers properly document their entitlement to deductions for charitable contributions. The IRS cannot ascertain this information from the board resolution itself since, as noted above, taxpayers will no longer have to submit that document with their returns. The collection of information is mandatory. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 250,000 hours.

Estimated average annual burden hours per respondent: .25 hours.

Estimated number of respondents: 1,000,000.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations (T.D. 9100) in this issue of the Bulletin contain amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301) designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. The text of those regulations also serves as the text

of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations generally affect taxpayers who must file any of the following forms: Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*; Form 972, *Consent of Shareholder To Include Specific Amount in Gross Income*; Form 973, *Corporation Claim for Deduction for Consent Dividends*; Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*; Form 1120, *U.S. Corporation Income Tax Return*; Form 1120S, *U.S. Income Tax Return for an S Corporation*; Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*; Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*; Form 5712-A, *Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)*; and Form 8832, *Entity Classification Election*.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described above under the heading "Paperwork Reduction Act" does not affect corporations that elect to be taxed under Subtitle A, Chapter 1, Subchapter S of the Code. Moreover, requiring a corporation to report the information described above concerning board of directors' approval of certain charitable contributions imposes virtually no incremental burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy

of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.170A-11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A-11 Limitation on, and carryover of, contributions by corporations.

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(b) * * *

(2) [The text of the proposed amendment to §1.170A-11(b)(2) is the same as the text of §1.170A-11T(b)(2) published elsewhere in this issue of the Bulletin].

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Par. 3. Section 1.556-2 is amended by:

1. Revising paragraph (e)(2)(vii).
2. Adding paragraph (e)(3).

The revision and addition read as follows:

§1.556-2 Adjustments to taxable income.

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(e) * * *

(2) * * *

(vii) [The text of the proposed amendment to §1.556-2(e)(2)(vii) is the same as the text of §1.556-2T(e)(2)(vii) published elsewhere in this issue of the Bulletin].

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(3) [The text of the proposed amendment to §1.556-2(e)(3) is the same as the text of §1.556-2T(e)(3) published elsewhere in this issue of the Bulletin].

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Par. 4. Section 1.565-1 is amended by revising paragraph (b)(3) to read as follows:

§1.565-1 General rule.

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(b) * * *

(3) [The text of the proposed amendment to §1.565-1(b)(3) is the same as the text of §1.565-1T(b)(3) published elsewhere in this issue of the Bulletin].

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Par. 5. Section 1.936-7 is amended by revising paragraph (b), Q.&A. 1 to read as follows:

§1.936-7 Manner of making elections under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

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(b) * * *

Q.& A. 1 [The text of the proposed amendment to §1.936-7(b), Q.& A. 1 is the same as the text of §1.936-7T(b), Q.& A. 1, published elsewhere in this issue of the Bulletin].

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Par. 6. Section 1.1017-1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§1.1017-1 Basis reductions following a discharge of indebtedness.

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(g) * * *

(2) * * *

(iii) * * *

(B) [The text of the proposed amendment to §1.1017-1(g)(2)(iii)(B) is the same as the text of §1.1017-1T(g)(2)(iii)(B) published elsewhere in this issue of the Bulletin].

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Par. 7. Section 1.1368-1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§1.1368-1 Distributions by S corporations.

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(f) * * *

(5) * * *

(iii) [The text of the proposed amendment to §1.1368-1(f)(5)(iii) is the same as the text of §1.1368-1T(f)(5)(iii) published elsewhere in this issue of the Bulletin].

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(g) * * *

(2) * * *

(iii) [The text of the proposed amendment to §1.1368-1(g)(2)(iii) is the same as the text of §1.1368-1T(g)(2)(iii) published elsewhere in this issue of the Bulletin].

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Par. 8. Section 1.1377-1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§1.1377-1 Pro rata share.

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(b) * * *

(5) * * *

(i) * * *

(C) [The text of the proposed amendment to §1.1377-1(b)(5)(i)(C) is the same as the text of §1.1377-1T(b)(5)(i)(C) published elsewhere in this issue of the Bulletin].

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Par. 9. Section 1.1502-21 is amended by revising paragraphs (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§1.1502-21 Net operating losses.

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(b) * * *

(3) * * * (i) [The text of the proposed amendment to §1.1502-21(b)(3)(i) is the same as the text of §1.1502-21T(b)(3)(i) published elsewhere in this issue of the Bulletin].

(ii) * * *

(B) [The text of the proposed amendment to §1.1502-21(b)(3)(ii)(B) is the same as the text of §1.1502-21T(b)(3)(ii)(B) published elsewhere in this issue of the Bulletin].

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Par. 10. Section 1.1502-75 is amended by revising paragraph (h)(2) to read as follows:

§1.1502-75 Filing of consolidated returns.

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(h) * * *

(2) [The text of the proposed amendment to §1.1502-75(h)(2) is the same as the text of §1.1502-75T(h)(2) published elsewhere in the issue of the Bulletin].

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Par. 11. Section 1.1503-2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

§1.1503-2 Dual consolidated loss.

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(g) * * *

(2) * * * (i) [The text of the proposed amendment to §1.1503-2(g)(2)(i) is the same as the text of §1.1503-2T(g)(2)(i) published elsewhere in this issue of the Bulletin].

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(iv) * * *

(B) * * *

(3) * * *

(iii) [The text of the proposed amendment to §1.1503-2(g)(2)(iv)(B)(3)(iii) is the same as the text of §1.1503-2T(g)(2)(iv)(B)(3)(iii) published elsewhere in this issue of the Bulletin].

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(vi) * * *

(B) [The text of the proposed amendment to §1.1503-2(g)(2)(vi)(B) is the same as the text of §1.1503-2T(g)(2)(vi)(B) published elsewhere in this issue of the Bulletin].

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Par. 12. Section 1.6038B-1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§1.6038B-1 Reporting of certain transfers to foreign corporations.

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(b) * * * (1) * * * (i) [The text of the proposed amendments to §1.6038B-1(b)(1)(i) is the same as the text of §1.6038B-1T(b)(1)(i) published elsewhere in this issue of the Bulletin].

(ii) [The text of the proposed amendment to §1.6038B-1(b)(1)(ii) is the same as the text of §1.6038B-1T(b)(1)(ii) published elsewhere in this issue of the Bulletin].

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PART 301—PROCEDURE AND ADMINISTRATION

Par. 13. The authority citation for part 301 continues to read in part as follows:

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

Par. 14. Section 301.7701-3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§301.7701-3 Classification of certain business entities.

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(c) * * * (1) * * *

(ii) [The text of the proposed amendment to §301.7701-3 (c)(1)(ii) is the same as the text of §301.7701-3T(c)(1)(ii) published elsewhere in this issue of the Bulletin].

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Robert E. Wenzel,
Deputy Commissioner for
Services and Enforcement.