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**Fr. Doc. E7-12085**

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-149036-04]

RIN 1545-BE07

Application of Section 6404(g) of the Internal Revenue Code  
Suspension

Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

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

and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the application of section 6404(g) of the Internal Revenue Code (Code) suspension provisions. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the gulf Opportunity zone act of 2005, and the Tax Relief and Health Care Act of 2006. The regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of those regulations also serve as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 19, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 11, 2007, at 10 a.m. must be received by September 20, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-149036-04), room 5203, Internal Revenue Service, PO Box 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-149036-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>. (IRS REG-149036-04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Stuart Spielman, (202) 622-7950; concerning submissions of comments, the hearing, and to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers) or Richard.A.Hurst@irs.counsel.treas.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6404(g). The temporary regulations add rules relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed or other reportable transactions. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 USC chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 USC chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been 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 timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for October 11, 2007, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 19, 2007, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 20, 2007. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies

of the agenda will be available free of charge at the hearing.

Drafting information

The principal author of these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301 -- PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6404-0 is amended as follows:

1. The introductory text is revised.
2. Entries are added for §301.6404-4.

The additions read as follows:

§301.6404-0 Table of contents.

This section lists the paragraphs contained in §§301.6404-1 through 301.6404-4.

\* \* \* \* \*

§301.6404-4 Listed transactions and undisclosed reportable transactions.

[Reserved]. The text of the entries or this section is the same as the text of the entries in §301.6404T published elsewhere in this issue of the Federal Register.

Par. 3. Section 301.6404-4 is added to read as follows:

§301.6404-4 Listed transactions and undisclosed reportable transactions.

(a) through (b) (4) [Reserved].

(b) (5) [The text of proposed §301.6404-4(b) (5) is the same as the text of §301.6404-4T(b) (5) published elsewhere in this issue of the Federal Register].

(c) and (d) [Reserved].

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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**Fr. Doc. E7-12082**

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-149036-04]

RIN 1545-BG75

Application of Section 6404(g) of the Internal Revenue Code  
Suspension Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes regulations for the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g) of the Internal Revenue Code (Code) that explain the general rules for suspension as well as exceptions to those general rules. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006. The proposed regulations affect individual taxpayers who file timely income tax returns with respect to whom the IRS does not timely provide a notice specifically stating an additional tax liability and the basis for that liability. This document also provides a notice of public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by September 19, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 11, 2007, at 10 a.m. must be received by September 20, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-149036-04), room 5203, Internal Revenue Service, PO Box 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-149036-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-149036-04). The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stuart Spielman, (202) 622-7950; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers) or [Richard.A.Hurst@irsounsel.treas.gov](mailto:Richard.A.Hurst@irsounsel.treas.gov).

## SUPPLEMENTARY INFORMATION:

## Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules relating to the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g). Section 6404(g) was added to the Code by section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685, 743) (RRA 98), effective for taxable years ending after July 22, 1998. Section 6404(g) was amended by section 903(c) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1652) (AJCA), enacted on October 22, 2004; by section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109-135 (119 Stat. 2577, 2608-09) (GOZA), enacted on December 21, 2005; by section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922, 2975), enacted on December 20, 2006; and by section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110-28 (121 Stat. 112, 200), enacted on May 25, 2007. The Treasury Department and the Internal Revenue Service are aware that questions have been raised regarding the effective date of the changes made by the Small Business and Work Opportunity Act of 2007 and are considering further guidance. These regulations are prescribed under section 7805.

## Explanation of Provisions

## General Rule

If an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period (or thirty-six month period) and ends twenty-one days after the IRS provides the notice. This suspension rule applies separately with respect to each item or adjustment.

## Amended Returns

The proposed regulations provide guidance on applying section 6404(g) to amended returns and other signed documents that show an increased tax liability, as well as to amended returns that show a decreased tax liability. If, on or after December 21, 2005, a taxpayer provides to the IRS an amended return or other signed written document showing an additional tax liability, then the eighteen-month period (or thirty-six month period) does not begin to run with respect to the items that gave rise to the additional tax liability until that return or other signed written document is provided to the IRS. This rule is mandated by GOZA section 303(b). Except as provided in GOZA section 303(b), the filing of an amended return has no effect on the

running of the eighteen-month period (or thirty-six month period) under section 6404(g). Accordingly, if a taxpayer files an amended return or other signed written document showing a decrease in tax liability and the IRS at any time proposes to adjust the changed item or items, any interest, penalty, addition to tax, or additional amount with respect to the changed item or items on the amended return or other signed written document will not be suspended. If married taxpayers file a return claiming a change in filing status to married filing jointly, the general rule authorizing suspension will not apply unless each spouse's separate return, if required to be filed, was timely. An amended return or other written document is provided to the IRS for purposes of these proposed regulations when it is received by the IRS.

#### Notice of Liability and the Basis for Liability

Notice to the taxpayer must be in writing and specifically state the amount of the liability and the basis for the liability. The notice must provide the taxpayer with sufficient information to identify which items of income, deduction, loss, or credit the IRS has adjusted or proposes to adjust, and the reason for that adjustment.

Administrative proceedings pertaining to adjustments to partnership items of partnerships subject to the unified audit and litigation procedures of Subchapter C of Chapter 63 of Subtitle F of the Internal Revenue Code (TEFRA) occur at the partnership level. Each partner has the right to participate in partnership-level administrative proceedings. The tax matters partner (TMP) of a TEFRA partnership has a fiduciary relationship to the partners and must provide the partners with information concerning significant administrative proceedings and actions within 30 days of the action or the receipt of information concerning the partnership matter. TEFRA partnership administrative proceedings at the partnership level concern the treatment of partnership items and the partners' allocable shares of those items rather than the specific tax liability of each partner attributable to the partnership items. Partners can, however, compute the specific tax attributable to adjustments to partnership items based on their interests in the partnership, so notice to the TMP concerning the treatment of partnership items constitutes notice to the partners under section 6404(g).

#### Exceptions to the General Rule for Suspension

The general rule for suspension does not apply to (1) Any penalty imposed by section 6651 for failing to file a tax return or for failing to pay tax; (2) any interest, penalty, addition to tax, or additional amount in a case involving fraud; (3) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on a return; (4) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; (5) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction not meeting the disclosure requirement of section 6664(d)(2)(A) or any listed transaction as defined in section 6707A(c); and (6) any criminal penalty.

The proposed regulations limit the exception pertaining to a case involving fraud to the taxpayer and the taxable year in issue. The proposed regulations also provide that the exception in section 6404(g) for "a case involving fraud" means that fraud on the return

with respect to any item will preclude suspension under section 6404(g) with respect to all items on the return.

AJCA section 903(b) added subparagraph (D), pertaining to gross misstatements, to section 6404(g)(2), effective for taxable years beginning after December 31, 2003. The proposed regulations define "gross misstatement" as the reporting of any item on the original or any amended return if that item is attributable to a gross valuation misstatement as defined in section 6662(h), a substantial omission of income as described in section 6501(e)(1) or section 6229(c), or a frivolous position or a desire to delay or impede the administration of the Federal income tax laws as described in section 6702.

#### Special Rules

Section 6404(g)(2)(C) provides that interest suspension does not apply to any tax liability shown on a return. Consistent with this exception, any interest, penalty, addition to tax, or additional amount with respect to an erroneous tentative carryback or refund adjustment will not be suspended because the disallowance of the erroneous tentative carryback or refund adjustment does not change the tax liability originally shown on the taxpayer's return. An election under section 183(e) to defer the determination as to whether the presumption applies that an activity is engaged in for profit tolls the notification period and the suspension period described in section 6404(g)(1), in that the election calls for the IRS to defer proposing adjustments regarding the activity.

#### Proposed Effective Date

The regulations, as proposed, apply as of the date of publication of a Treasury decision adopting these rules as final regulations in the Federal Register.

#### 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been 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 Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for October 11, 2007, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111

Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments on September 19, 2007, and an outline of the topics to be discussed, and the time to be devoted to each topic (signed original and eight (8) copies) by September 20, 2007. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

#### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly 26 CFR part 301 is proposed to be amended as follows:

#### PART 301 PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6404-0 is amended as follows:

1. The introductory text is revised.
2. Entries are added for §301.6404-4.

The addition reads as follows:

§301.6404-0 Table of contents.

This section lists the paragraphs contained in §§301.6404-1 through 301.6404-4.

\* \* \* \* \*

§301.6404-4 Suspension of interest and certain penalties where the Internal Revenue Service does not contact the taxpayer.

(a) Suspension.

- (1) In general.
- (2) Treatment of amended returns and other documents.
  - (i) Amended returns filed on or after December 21, 2005, that shows an increase in tax liability.
  - (ii) Amended returns that show a decrease in tax liability.
  - (iii) Amended return and other documents as notice.
  - (iv) Joint return after filing separate return.
- (3) Separate application.
- (4) Duration of suspension period.
- (5) Example.
- (6) Notice of liability and the basis for the liability.
  - (i) In general.
  - (ii) Tax attributable to TEFRA partnership items.
  - (iii) Examples.
- (7) Providing notice by the IRS.
  - (i) In general.
    - (ii) Providing notice in TEFRA partnership proceedings.
  - (b) Exceptions.
    - (1) Failure to file tax return or to pay tax.
    - (2) Fraud.
    - (3) Tax shown on return.
    - (4) Gross misstatement.
      - (i) Description.
    - (5) [Reserved].
  - (c) Special rules.
    - (1) Tentative carryback and refund adjustments.
    - (2) Election under section 183(e).
    - (d) Effective/applicability date.

Par. 3. Section 301.6404-4 is added to read as follows:

§301.6404-4 Suspension of interest and certain penalties where the Internal Revenue Service does not contact the taxpayer.

(a) Suspension--(1) In general. Except as provided in paragraph (b) of this section, if an individual taxpayer files a return of tax imposed by subtitle A on or before the due date for the return (including extensions) and the Internal Revenue Service (IRS) does not timely provide the taxpayer with a notice specifically stating the amount of any increased liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return. This suspension is computed by reference to the period of time the failure continues to exist. The notice described in this paragraph (a)(1) is timely if provided before the close of the eighteen-month period (thirty-six month period in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions.

(2) Treatment of amended returns and other documents--(i) Amended returns filed on or after December 21, 2005, that show an increase in tax liability. If a taxpayer, on or after December 21, 2005, provides to the IRS an amended return or one or more other signed written documents showing an increase in tax liability, the date on which the return was filed will, for purposes of this paragraph (a), be the date on which the last of the documents was provided. Documents described in this paragraph (a)(2)(i) are provided on the date that they are received by the IRS.

(ii) Amended returns that show a decrease in tax liability. If a taxpayer provides to the IRS an amended return or other signed written document that shows a decrease in tax liability, any interest, penalty, addition to tax, or additional amount will not be suspended if the IRS at any time proposes to adjust the changed item or items on the amended return or other signed written document.

(iii) Amended return and other documents as notice. As to the items reported, an amended return or one or more other signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year serves as the notice described in paragraph (a)(1) of this section.

(iv) Joint return after filing separate return. A joint return filed under section 6013(b) is subject to the rules for amended returns described in this paragraph (a)(2). The IRS will not suspend any interest, penalty, addition to tax, or additional amount on a joint return filed under section 6013(b) unless each spouse, if required to file a return, filed a timely separate return.

(3) Separate application. This paragraph (a) shall be applied separately with respect to each item or adjustment.

(4) Duration of suspension period. The suspension period described in paragraph (a)(1) of this section begins the day after the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period ends twenty-one days after the earlier of the date on which the IRS mails the required notice to the taxpayer's last known address, the date on which the required notice is hand-delivered to the taxpayer, or the date on which the IRS receives an amended return or other signed written document showing an increased liability.

(5) Example. The following example illustrates the rules of this paragraph (a):

Example. An individual taxpayer timely files an income tax return for taxable year 2004 on the due date of the return, April 15, 2005. On December 11, 2006, the taxpayer mails to the IRS an amended return reporting an additional item of income and an increased tax liability for taxable year 2004. The IRS receives the amended return on December 13, 2006. On January 16, 2007, the IRS provides the taxpayer with a notice stating that the taxpayer has an additional tax liability based on the disallowance of a deduction the taxpayer claimed on his original return and did not change on his amended return. The date the amended return was received substitutes for the date that the original return was filed with respect to the additional item of tax liability reported on the amended return. Thus, the IRS will not suspend interest, penalties, additions to tax, or additional amounts with respect to the additional item of income and the increased tax liability reported on the amended return. The suspension period for the additional tax liability based on the IRS' disallowance of the deduction begins on October 15, 2006, so the IRS will suspend interest, penalties, additions to tax, and additional amounts with respect to the disallowed deduction and additional tax liability from that date through February 6, 2007, which is twenty-one days after the IRS provided notice of the additional tax liability and the basis for that liability.

(6) Notice of liability and the basis for the liability--(i) In general. Notice to the taxpayer must be in writing and specifically state the amount of the liability and the basis for the liability. The notice must provide the taxpayer with sufficient information to identify which items of income, deduction, loss, or credit the IRS has adjusted or proposes to adjust, and the reason for that adjustment. Notice of the reason for the adjustment does not require a detailed explanation or a citation to any Internal Revenue Code section or other legal authority. The IRS does not have to incorporate all the information necessary to satisfy the notice requirement within a single document or provide all the information at the same time. Documents that may contain information sufficient to qualify as notice, either alone or in conjunction with other documents, include, but are not limited to, statutory notices of deficiency, examination reports (for example, Forms 4549 "Income Tax Examination Changes," Forms 886-A "Explanation of Items"), Forms 870 "Waiver of Restrictions on Assessments and Collection of Deficiency in Tax and Acceptance of Overassessment," notices of proposed deficiency that allow the taxpayer an opportunity for review in the Office of Appeals (30-day letters), notices pursuant to section 6213(b) (mathematical or clerical errors), and notice and demand for payment of a jeopardy assessment under section 6861.

(ii) Tax attributable to TEFRA partnership items. Notice to the partner or the tax matters partner (TMP) of a partnership subject to the Unified Audit and Litigation Procedures of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA) that provides specific information about the basis for the adjustments to partnership items is sufficient notice if a partner could reasonably compute the specific tax attributable to the partnership item based on the proposed adjustments as applied to the partner's individual tax situation. Documents provided by the IRS during a TEFRA partnership proceeding that may contain information sufficient to

satisfy the notice requirements include, but are not limited to, a Notice of Final Partnership Administrative Adjustment, examination reports (for example, Forms 4549, Forms 886-A), or a letter that allows the partners an opportunity for review in the Office of Appeals (60-day letter).

(iii) Examples. The following examples illustrate the rules of this paragraph (a)(6).

Example 1. During an audit of Taxpayer A's 2005 taxable year return, the IRS questions a charitable deduction claimed on the return. The IRS provides A with a "30-day letter" that proposes a deficiency of \$1,000 based on the disallowance of the charitable deduction and informs A that A may file a written protest of the proposed deficiency to the Office of Appeals within 30 days. The letter includes as an attachment a copy of the revenue agent's report that states that "It has not been established that the amount shown on your return as a charitable contribution was paid during the tax year. Therefore, this deduction is not allowable." The information in the 30-day letter and attachment provides A with notice of the specific amount of the liability and the basis for that liability as described in this paragraph (a).

Example 2. Taxpayer B is a partner in partnership P, a TEFRA partnership for taxable year 2005. B claims a distributive share of partnership income on B's Federal income tax return for 2005 filed on April 17, 2006. On October 1, 2007, during the course of a partnership audit of P for taxable year 2005, the IRS provides P's TMP a "60-day letter" proposing to adjust P's income by \$10,000. The IRS had previously provided the TMP with a copy of the examination report explaining that the adjustment was based on \$10,000 of unreported net income. On October 31, 2007, P's TMP informs B of the proposed adjustment as required by §301.6223(g)-1(b). By accounting for B's distributive share of the \$10,000 of unreported income from P with B's other income tax items, B can determine B's tax attributable to the \$10,000 partnership adjustment. The information in the 60-day letter and the examination report allows B to compute the specific amount of the liability attributable to the adjustment to the partnership item and the basis for that adjustment and therefore satisfies the notice requirement of paragraph (a). Because the IRS provided that notice to the TMP, B's agent under the TEFRA partnership provisions, within eighteen months of the April 17, 2006, filing date of B's return, any interest, penalty, addition to tax, or additional amount with respect to B's tax liability attributable to B's distributive share of the \$10,000 of unreported partnership income will not be suspended under section 6404(g).

(7) Providing notice by the IRS--(i) In general. The IRS may provide notice by mail or in person to the taxpayer or the taxpayer's representative. If the IRS mails the notice, it must be sent to the taxpayer's last known address under rules similar to section 6212(b), except that certified or registered mail is not required. Notice is considered provided as of the date of mailing or delivery in person.

(ii) Providing notice in TEFRA partnership proceedings. In the case of TEFRA partnership proceedings, the IRS must provide notice of final partnership administrative adjustments (FPAA) by mail to those partners specified in section 6223. Within 60 days of an FPAA being mailed, the TMP is required to forward notice of the FPAA to those partners not entitled to direct notice from the IRS under section

6223. Certain partners with small interests in partnerships with more than 100 partners may form a Notice Group and designate a partner to receive the FPAA on their behalf. The IRS may provide other information after the beginning of the partnership administrative proceeding to the TMP who, in turn, must provide that information to the partners specified in §301.6223(g)-1 within 30 days of receipt. Pass-thru partners who receive notices and other information from the IRS or the TMP must forward that notice or information within 30 days to those holding an interest through the pass-thru partner. Information provided by the IRS to the TMP is deemed to be notice for purposes of this section to those partners specified in §301.6223(g)-1 as of the date the IRS provides that notice to the TMP. A similar rule applies to notice provided to the designated partner of a Notice Group, and to notice provided to a pass-thru partner. In the foregoing situations, the TMP, designated partner, and pass-thru partner are agents for direct and indirect partners. Consequently, notice to these agents is deemed to be notice to the partners for whom they act.

(b) Exceptions--(1) Failure to file tax return or to pay tax. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any penalty imposed by section 6651.

(2) Fraud. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any interest, penalty, addition to tax, or additional amount in a case involving fraud. Fraud has the same meaning in this paragraph (b) as in section 6501(c)(1) and is not attributed from one taxpayer to another taxpayer. If a taxpayer files a fraudulent return for one year, paragraph (a) of this section may apply to any other tax year of the taxpayer that does not involve fraud. Fraud affecting one item on a return precludes paragraph (a) of this section from applying to any other items on that return.

(3) Tax shown on return. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on a return.

(4) Gross misstatement--(i) Description. Paragraph (a) of this section does not apply and interest will not be suspended with respect to any interest, penalty, addition to tax, or additional amount with respect to a gross misstatement. A gross misstatement for purposes of this paragraph (b) means--

(A) A substantial omission of income as described in section 6501(e)(1) or section 6229(c)(2);

(B) A gross valuation misstatement within the meaning of section 6662(h); or

(C) A misstatement to which the penalty under section 6702(a) applies.

(ii) If a gross misstatement occurs, then interest will not be suspended with respect to any items of income omitted from the return and with respect to overstated deductions, even though one or more of the omitted items would not constitute a substantial omission, gross valuation misstatement, or misstatement to which section 6702(a) applies.

(5) [Reserved].

(c) Special rules--(1) Tentative carryback and refund adjustments. If an amount applied, credited, or refunded under section 6411 exceeds the overassessment properly attributable to a tentative carryback or refund adjustment, any interest, penalty, addition to tax, or additional amount with respect to the excess will not be suspended.

(2) Election under section 183(e). If a taxpayer elects under section 183(e) to defer the determination as to whether the presumption applies that an activity is engaged in for profit, the 18-month (or 36-month) notification period described in paragraph (a)(1) of this section or, if that period has passed as of the date the election is made, the suspension period described in paragraph (a)(4) of this section will be tolled for the period to which the election applies. Tolling will begin on the date the election is made and end on the later of the date the return for the last taxable year to which the election applies is filed or is due without regard to extensions.

(d) Effective/applicability date. The rules of this section apply as of the date of publication of a Treasury decision adopting these rules as final regulations in the Federal Register.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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**Fr. Doc. E7-12081**

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9333]

RIN 1545-BG64

Application of Section 6404(g) of the Internal Revenue Code  
Suspension

Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6404(g)(2)(E) of the Internal Revenue Code on the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006. The temporary regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the Federal Register.

DATES: Effective Date: These regulations are effective on June 21, 2007.

Applicability Date: These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Stuart Spielman, (202) 622-7950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules under section 6404(g) relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed transactions or undisclosed reportable

transactions. Section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685, 743) (RRA 98), added section 6404(g) to the Code, effective for taxable years ending after July 22, 1998. Section 6404(g) generally suspends interest and certain penalties if the IRS does not contact a taxpayer regarding possible adjustments to the taxpayer's liability within a specified period of time. Section 903(c) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1652) (AJCA), excepted from the general interest suspension rules any interest, penalty, addition to tax, or additional amount with respect to a listed transaction or an undisclosed reportable transaction, effective for interest accruing after October 3, 2004. Section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109-135 (119 Stat. 2577, 2608-09) (GOZA), modified the effective date of the exception from the suspension rules for certain listed and reportable transactions. Section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922, 2975), provided a technical correction regarding the authority to exercise the "reasonably and in good faith" exception to the effective date rules. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110-28 (121 Stat. 112, 200), extended the current eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

#### Explanation of Provisions

If an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period (or thirty-six month period) and ends twenty-one days after the IRS provides the notice. This suspension rule applies separately with respect to each item or adjustment. If, on or after December 21, 2005, a taxpayer provides to the IRS an amended return or other signed written document showing an additional tax liability, then the eighteen-month period (or thirty-six month period) does not begin to run with respect to the items that gave rise to the additional tax liability until that return or other signed written document is provided to the IRS.

The general rule for suspension does not apply to any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) is not met or a listed transaction as defined in section 6707A(c). This exception applies to interest accruing after October 3, 2004. With respect to interest relating to listed transactions or undisclosed reportable transactions accruing on or before October 3, 2004, the general rule for suspension applies only to (1) a participant in a settlement initiative, (2) a taxpayer

acting reasonably and in good faith, or (3) a closed transaction. A participant in a settlement initiative is a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in IRS Announcement 2005-80, 2005-2 CB 967 (see §601.601(d)(2)(ii)(b)); or had entered into a settlement agreement under Announcement 2005-80 or any other prior or contemporaneous settlement initiative either formally published or directly communicated to taxpayers known to have participated in a tax shelter promotion. A taxpayer acting reasonably and in good faith is a taxpayer who the IRS determines has acted reasonably and in good faith, taking into account all the facts and circumstances surrounding a transaction. A transaction is a "closed transaction" if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law. A transaction is also a closed transaction if a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 USC chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 USC chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Federal Register. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

#### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

#### PART 301 PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6404-0T is added to read as follows:

§301.6404-0T Table of contents (temporary).

This section lists the paragraphs contained in §301.6404-4T.

§301.6404-4T Listed transactions and undisclosed reportable transactions (temporary).

(a) [Reserved].

(b) (1) through (b) (4) [Reserved].

(5) Listed transactions and undisclosed reportable transactions.

(i) In general.

(ii) Effective dates.

(iii) Special rule for certain listed or undisclosed reportable transactions.

(A) Participant in a settlement initiative.

(1) Participant in a settlement initiative who as of January 23, 2006, had not reached agreement with the IRS.

(2) Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.

(B) Taxpayer acting in good faith.

(1) In general.

(2) Presumption.

(3) Examples.

(C) Closed transactions.

Par. 3. Section 301.6404-4T is added to read as follows:

§301.6404-4T Listed transactions and undisclosed reportable transactions (temporary).

(a) [Reserved].

(b) (1) through (4) [Reserved].

(5) Listed transactions and undisclosed reportable transactions--(i) In general. The general rule of suspension under section 6404(g) (1) does not apply to any interest, penalty, addition to tax, or additional amount with respect to any listed transaction as defined in section 6707A(c) or any undisclosed reportable transaction. For purposes of this section, an undisclosed reportable transaction is a reportable transaction described in the regulations under section 6011 that is not adequately disclosed under those regulations and that is not a listed transaction. Whether a transaction is a listed transaction or an undisclosed reportable transaction is determined as of the date the IRS provides notice to the taxpayer regarding that transaction that specifically states the taxpayer's liability and the basis for that liability.

(ii) Effective/applicability dates. (A) These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

(B) The applicability of these regulations expires on or before June 21, 2010.

(iii) Special rule for certain listed or undisclosed reportable transactions. With respect to interest relating to listed transactions and undisclosed reportable transactions accruing on or before October 3, 2004, the exception to the general rule of interest suspension will not apply to a taxpayer who is a participant in a settlement initiative with respect to that transaction, to any transaction in which the taxpayer has acted reasonably and in good faith, or to a closed transaction. For purposes of this special rule, a "participant in a settlement initiative," a "taxpayer acting in good faith," and a "closed transaction" have the following meanings:

(A) Participant in a settlement initiative--(1) Participant in a settlement initiative who, as of January 23, 2006, had not reached agreement with the IRS. A participant in a settlement initiative includes a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80, 2005-2 CB 967. See §601.601(d)(2)(ii)(b) of this chapter. A taxpayer participates in the initiative by complying with Section 5 of the Announcement. A taxpayer is not a participant in a settlement initiative if, after January 23, 2006, the taxpayer withdraws from or terminates participation in the initiative, or the IRS determines that a settlement agreement will not be reached under the initiative within a reasonable period of time.

(2) Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS. A participant in a settlement initiative is a taxpayer who, as of January 23, 2006, had entered into a settlement agreement under Announcement 2005-80 or any other prior or contemporaneous settlement initiative either offered through published guidance or, if the initiative was not formally published, direct contact with taxpayers known to have participated in a tax shelter promotion.

(B) Taxpayer acting in good faith--(1) In general. The IRS may suspend interest relating to a listed transaction or an undisclosed reportable transaction accruing on or before October 3, 2004, if the taxpayer has acted reasonably and in good faith. The IRS' determination of whether a taxpayer has acted reasonably and in good faith will take into account all the facts and circumstances surrounding the transaction. The facts and circumstances include, but are not limited to, whether the taxpayer disclosed the transaction and the taxpayer's course of conduct after being identified as participating in the transaction, including the taxpayer's response to opportunities afforded to the taxpayer to settle the transaction, and whether the taxpayer engaged in unreasonable delay at any stage of the matter.

(2) Presumption. If a taxpayer and the IRS promptly enter into a settlement agreement with respect to a transaction on terms proposed by the IRS or, in the event of atypical facts and circumstances, on terms more favorable to the taxpayer, and the taxpayer has complied with the terms of that agreement without unreasonable delay, the taxpayer will be presumed to have acted reasonably and in good faith except in rare and unusual circumstances. Rare and unusual circumstances must involve specific actions involving harm to tax administration. Even if a taxpayer does not qualify for the

presumption described in this paragraph (b)(5)(iii)(B)(2), the taxpayer may still be granted interest suspension under the general facts and circumstances test set forth in paragraph (b)(5)(iii)(B)(1) of this section.

(3) Examples. The following examples illustrate the rules the IRS uses in determining whether a taxpayer has acted reasonably and in good faith.

Example 1. The taxpayer participated in a listed transaction. The IRS, in a letter sent directly to the taxpayer in July 2005, proposed a settlement of the transaction. The taxpayer informed the IRS of his interest in the settlement within the prescribed time period. The revenue agent assigned to the taxpayer's case was not able to calculate the taxpayer's liability under the settlement or tender a closing agreement to the taxpayer until March 2006. The taxpayer promptly executed the closing agreement and returned it to the IRS with a proposal for arrangements to pay the agreed-upon liability. The IRS agreed with the proposed arrangements for full payment. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 2. The facts are the same as in Example 1, except that the letter was sent by the IRS in February 2006, and the closing agreement was tendered to the taxpayer in April 2006. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 3. The taxpayer participated in a listed transaction. In response to an offer of settlement extended by the IRS in August 2005, the taxpayer informed the IRS of her interest in entering into a closing agreement on the terms proposed by the IRS. The revenue agent assigned to the transaction calculated the taxpayer's liability under the settlement and tendered a closing agreement to the taxpayer in November 2005. The taxpayer executed the closing agreement but failed to make any arrangement for payment of the agreed-upon liability stated in the closing agreement. Taking into account all the facts and circumstances surrounding the transaction, the taxpayer did not act reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will not be suspended.

Example 4. The taxpayer participated in a listed transaction. In a letter sent by the IRS directly to the taxpayer in July 2005, the IRS extended an offer of settlement. The July 2005 letter informed the taxpayer that, absent atypical facts and circumstances, the taxpayer should not expect resolution of the tax issues on more favorable terms than proposed in the letter. The taxpayer declined the proposed settlement terms of the letter and proceeded to Appeals to present what the taxpayer claimed were atypical facts and circumstances. The administrative file did not contain sufficient information bearing on atypical facts and circumstances, and the taxpayer failed to provide additional information when requested by Appeals to explain how the transaction originally proposed to the taxpayer differed in structure or types of tax benefits claimed, from the transaction as implemented by the taxpayer. Appeals determined that the taxpayer's facts and

circumstances were not significantly different from those of other taxpayers who participated in that listed transaction and thus, were not atypical. In September 2006, the taxpayer and Appeals entered into a closing agreement on terms consistent with those originally proposed in the July 2005 letter. The taxpayer has complied with the terms of that closing agreement. For purposes of the application of section 6404(g)(2)(E), this taxpayer is not presumed to have acted reasonably and in good faith; instead, the IRS will apply the general rule to determine whether to suspend interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

Example 5. The facts are the same as in Example 4, except that Appeals agrees that atypical facts were present that warrant additional concessions by the government. A settlement is reached on terms more favorable to the taxpayer than those proposed in the July 2005 letter. For purposes of the application of section 6404(g)(2)(E), this taxpayer is presumed to have acted reasonably and in good faith, and absent evidence of rare or unusual circumstances harmful to tax administration, is eligible for suspension of interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

(C) Closed transactions. A transaction is considered closed for purposes of this clause if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law, or a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

(c) [Reserved].

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: June 15, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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