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Fr. Doc. E7-21727

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-209020-86]

RIN 1545-AC09

Foreign Tax Credit: Notification of Foreign Tax Redeterminations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published on June 23, 1988, relating to sections 905(c) and 6689 (the 1988 proposed regulations). In addition, in the Rules and Regulations section of this issue of the Federal Register, the IRS and the Treasury Department are issuing temporary regulations relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination. The IRS and the Treasury Department are also issuing temporary regulations on Procedure and Administration under section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination as required under section 905(c). These temporary regulations affect taxpayers that have paid foreign taxes which have been redetermined and provide guidance needed to comply with statutory changes made to the applicable law by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. The text of those temporary 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 February 5, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-209020-86), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-209020-90), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-209020-86).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number); concerning the submission of comments, Kelly Banks, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have 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 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 January 7, 2008. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

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

How the burden of complying with the proposed collections 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 collections of information in this notice of proposed rulemaking are in §1.905-4. This information is required to enable the IRS to verify the amounts of the foreign tax redeterminations and to determine the amount of the penalty under section 6689, if a taxpayer fails to notify the IRS of a foreign tax redetermination. This information will be used by the IRS for examination purposes. The collections of information are mandatory. The likely respondents are individuals and business or other for-profit institutions.

Estimated total annual reporting: 54,000 hours.

The estimated annual burden per respondent varies from 3 hours to 8 hours, depending on individual circumstances, with an estimated average of 4.2 hours.

Estimated number of respondents: 13,000.

Estimated 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

On June 23, 1988, the IRS published in the Federal Register a notice of proposed rulemaking (53 FR 23659) (INTL-061-86) (the 1988 proposed regulations) that would have provided rules with respect to the time and manner of reporting a foreign tax redetermination and to the penalty under section 6689. Written comments were received; however, no hearing was requested or held. Subsequently, section 1102(a)(1) and 1102(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 963-966 (1997)), amended section 905(c), effective for taxes paid or accrued in taxable years beginning after December 31, 1997. Subsequently, section 408(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1499 (2004)), modified section 986(a), effective for taxable years beginning after December 31, 2004. In light of the comments received on the 1988 proposed regulations and the statutory changes to sections 905(c) and 986(a), sections of the 1988 proposed regulations are revised and other sections are withdrawn. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

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 the following regulations, §§1.905-3, 1.905-4, 1.905-5, and 301.6689-1. With respect to §1.905-4, it is hereby certified that this regulation 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 requirement under §1.905-4 that is imposed on small entities flows directly from section 905(c), which states that, "[T]he taxpayer shall notify the Secretary," of a foreign tax redetermination that may result in a redetermination of the taxpayer's United States tax liability. In order for the taxpayer to satisfy this notification requirement, information with respect to all foreign tax redeterminations must be collected. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a 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. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the Federal Register.

Drafting Information

The principal author of this document is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Partial Withdrawal of a Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, §1.905-3(d)(2)(iii) and (iv) and §1.905-3(d)(4) of the notice of proposed rulemaking (INTL-061-86, REG-209020-86) published in the Federal Register on June 23, 1988 (53 FR 23659) are withdrawn.

Proposed Amendments to the Regulations

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

PART 1--INCOME TAXES

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

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

Par. 2. Section 1.905-3 is added to read as follows:

§1.905-3 Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination.

[The text of this section is the same as the text of §1.905-3T(a) through (e) published elsewhere in this issue of the Federal Register.]

Par. 3. Section 1.905-4 is added to read as follows:

§1.905-4 Notification of foreign tax redetermination.

[The text of this section is the same as the text of §1.905-4T(a) through (f)(2) published elsewhere in this issue of the Federal Register.]

§1.905-5 Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987 (temporary).

[The text of this section is the same as the text of §1.905-5T(a) through (f) published elsewhere in this issue of the Federal Register.]

PART 301--PROCEDURE AND ADMINISTRATION

Par. 4. The citation authority for part 301 continues to read as follows:

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

Par. 5. Section 301.6689-1 is added to read as follows:

§301.6689-1 Failure to file notice of redetermination of foreign tax

(a) [The text of the proposed amendments to §301.6689-1(a) is the same as the text of §301.6689-1T(a) published elsewhere in this issue of the Federal Register.]

(b) through (d) [Reserved]. For further guidance, see §301.6689-1T(b) through (d).

(e) [The text of the proposed amendments to §301.6689-1(e) (1) is the same as the text of §301.6689-1T(e) (1) published elsewhere in this issue of the Federal Register.]

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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