

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-138707-06]

RIN 1545-BF90

Exclusions from Gross Income of Foreign Corporations

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 that modify final regulations issued under section 883(a) and (c) of the Internal Revenue Code (Code), relating to income derived by foreign corporations from the international operation of ships or aircraft. Those regulations revise §1.883-3 of the final regulations, relating to the treatment of controlled foreign corporations, following the repeal of section 954(a)(4) and (f) (foreign base company shipping provisions) by section 415 of the American Jobs Creation Act of 2004. In addition, those regulations provide guidance for foreign corporations organized in countries that provide an exemption from taxation solely through an income tax convention, and amend certain provisions in the current section 883 regulations. The text of those regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by September 24, 2007.

Outlines of topics to be discussed at the public hearing scheduled for Wednesday, October 24, 2007, at 10 a.m. must be received by Monday, September 24, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-138707-06), 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-138707-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-138707-06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Patricia A. Bray, at (202) 622-3880; concerning submissions of comments and/or requests for a hearing, Kelly Banks, at (202) 622-0392 (not toll-free numbers).

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)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1667.

Comments on the collections 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 August 24, 2007.

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 collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collections of information in this proposed regulation are in §§1.883-2(f), 1.883-3(c) and (d), and 1.883-4(e). This information is required to enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of ships or aircraft from gross income on its U.S. Federal income tax return. This information will also enable the IRS to monitor compliance with the provisions of the proposed regulations with respect to the stock ownership requirements of §1.883-1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income.

The collections of information are mandatory. The likely respondents are foreign

corporations engaged in the international operation of ships or aircraft that wish to claim an exemption from U.S. tax under section 883, and certain of their shareholders owning (directly or indirectly) a majority of the value of the shares of such corporations.

Estimated total annual reporting/recordkeeping burden on foreign corporations: 1200 hours.

The estimated annual burden per respondent varies from 0 minutes to 3 hours, depending on the circumstances of the foreign corporation, with an estimated average of one hour.

Estimated number of respondents: 1,200.

Estimated annual frequency of responses: once.

Estimated total annual reporting burden on shareholders: 925 hours.

The estimated annual burden per respondent varies from 1 minute to one hour, depending on the circumstances of the shareholder or intermediary, with an estimated average of 30 minutes.

Estimated number of respondents: 1850.

Estimated annual frequency of shareholder or intermediary responses: once every three years if no information changes and once a year if a change in ownership information occurs.

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 and 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 in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1. Those regulations amend the income inclusion test in §1.883-3 of the final regulations issued in TD 9087 (68 FR 51394). Those regulations also address a number of comments that have been received concerning other portions of the final section 883 regulations. The text of those regulations serves as the text of these regulations. 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. 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. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a significant number of U.S. small entities. This certification is based on the fact that these regulations apply solely to foreign corporations, and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U.S. small entities. 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 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 submitted timely to the IRS. The IRS and 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 has been scheduled for October 24, 2007, beginning at 10 a.m. in the IRS 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 24, 2007, and an outline of the topics to be discussed and the time devoted to each topic (a signed original and eight (8) copies) by September 24, 2007. A period of 10 minutes will be allocated 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 proposed regulations is Patricia A. Bray of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

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 * * *

Par. 2. Section 1.883-0 is amended by revising the entries for §§1.883-1(g)(3) and (h)(3), 1.883-2(e)(2), 1.883-3, and 1.883-5(d) and (e) to read as follows:

§1.883-0 Outline of major topics.

* * * * *

§1.883-1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(g) * * *

(3) [The text of the proposed entry for §1.883-1(g)(3) is the same as the text of the entry for §1.883-1T(g)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(h) * * *

(3) * * *

(i) through (iv) [The text of the proposed entries for §1.883-1(h)(3)(i) through (iv) is the same as the text of the entries for §1.883-1T(h)(3)(i) through (iv) published elsewhere in this issue of the **Federal Register**].

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§1.883-2 Treatment of publicly traded corporations.

* * * * *

(e) * * *

(2) [The text of the proposed entry for §1.883-2(e)(2) is the same as the text of the entry for §1.883-2T(e)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

§1.883-3 Treatment of controlled foreign corporations.

* * * * *

[The text of the proposed entry for §1.883-3 is the same as the entry for §1.883-3T published elsewhere in this issue of the **Federal Register**].

§1.883-5 Effective/applicability dates.

* * * * *

(d) and (e) [The text of the proposed entries for §1.883-5(d) and (e) is the same as the text of the entries for §1.883-5T(d) and (e) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.883-1 is amended by revising paragraphs (c)(3)(i)(D), (c)(3)(i)(G), (c)(3)(i)(H), (c)(3)(i)(I), (c)(3)(ii), (g)(1)(ix), (g)(1)(x), (g)(1)(xi), (g)(3), (h)(1)(ii), and (h)(3) to read as follows:

§1.883-1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) [The text of the proposed amendment to §1.883-1(c)(3)(i)(D) is the same as the text of §1.883-1T(c)(3)(i)(D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(G) through (I) [The text of the proposed amendments to §1.883-1(c)(3)(i)(G) through (I) is the same as the text of §1.883-1T(c)(3)(i)(G) through (I) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to §1.883-1(c)(3)(ii) is the same as the text of §1.883-1T(c)(3)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(1) * * *

(ix) through (xi) [The text of the proposed amendments to §1.883-1(g)(1)(ix) through (xi) is the same as the text of §1.883-1T(g)(1)(ix) through (xi) published elsewhere in this issue of the **Federal Register**].

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(3) [The text of the proposed amendment to §1.883-1(g)(3) is the same as the text of §1.883-1T(g)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(h) * * *

(1) * * *

(ii) [The text of the proposed amendment to §1.883-1(h)(1)(ii) is the same as the text of §1.883-1T(h)(1)(ii) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(3) [The text of the proposed amendment to §1.883-1(h)(3) is the same as the text of §1.883-1T(h)(3) published elsewhere in this issue of the **Federal Register**].

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Par. 4. Section 1.883-2 is amended by revising paragraphs (e)(2), (f)(3), and (f)(4)(ii) to read as follows:

§1.883-2 Treatment of publicly-traded corporations.

* * * * *

(e) * * *

(2) [The text of the proposed amendment to §1.883-2(e)(2) is the same as the text of §1.883-2T(e)(2) published elsewhere in this issue of the **Federal Register**].

(f) * * *

(3) [The text of the proposed amendment to §1.883-2(f)(3) is the same as the text of §1.883-2T(f)(3) published elsewhere in this issue of the **Federal Register**].

(4) * * *

(ii) [The text of the proposed amendment to §1.883-2(f)(4)(ii) is the same as the text of §1.883-2T(f)(4)(ii) published elsewhere in this issue of the **Federal Register**].

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Par. 5. Section 1.883-3 is revised to read as follows:

§1.883-3 Treatment of controlled foreign corporations.

[The text of this proposed section is the same as the text of §1.883-3T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 1.883-4 is amended by revising paragraphs (d)(4)(i)(C),

(d)(4)(i)(D), (e)(2), and (e)(3) to read as follows:

§1.883-4 Qualified shareholder stock ownership test.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) and (D) [The text of the proposed amendments to §1.883-4(d)(4)(i)(C) and (D) is the same as the text of §1.883-4T(d)(4)(i)(C) and (D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(2) and (3) [The text of the proposed amendments to §1.883-4(e)(2) and (3) is the same as the text of §1.883-4T(e)(2) and (3) published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.883-5 is amended by revising paragraphs (d) and (e) to read as follows:

§1.883-5 Effective/applicability dates.

* * * * *

(d) [The text of the proposed amendment to §1.883-5(d) is the same as the text of §1.883-5T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of the proposed amendment to §1.883-5(e) is the same as the text of §1.883-5T(e) published elsewhere in this issue of the **Federal Register**].

/s/ Kevin M. Brown

Deputy Commissioner for Services and Enforcement.