

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9596]

RIN 1545-BK39

Disregarded Entities and the Indoor Tanning Services Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to disregarded entities (including qualified subchapter S subsidiaries) and the indoor tanning services excise tax. These regulations affect disregarded entities responsible for collecting the indoor tanning services excise tax and owners of those disregarded entities. The text of these temporary regulations serves as the text of proposed regulations (REG-125570-11) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §§1.1361-4T(a)(8)(iii)(B) and 301.7701-2T(e)(9)(i).

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622-3130 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provisions**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code (Code) and the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Code.

Since January 1, 2008, §§1.1361-4(a)(8) and 301.7701-2(c)(2)(v) have treated a qualified subchapter S subsidiary (QSub) and a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 (collectively, a disregarded entity) as a separate entity for purposes of excise taxes imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Code, and any floor stocks tax imposed on articles subject to any of these taxes.

Effective July 1, 2010, section 10907 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), added new Chapter 49 to the Code, which imposes an excise tax on amounts paid for indoor tanning services under section 5000B.

Consistent with existing §§1.1361-4(a)(8) and 301.7701-2(c)(2)(v), these temporary regulations add Chapter 49 to the list of excise taxes for which disregarded entities are treated as separate entities. Accordingly, effective for taxes imposed on amounts paid on or after July 1, 2012, these temporary regulations treat a disregarded entity as a separate entity for purposes of the indoor tanning services excise tax under section 5000B. These temporary

regulations also treat a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 as a corporation with respect to the indoor tanning services excise tax.

The indoor tanning services excise tax is reported on Form 720 “Quarterly Federal Excise Tax Return”. As a result of these temporary regulations, a Form 720 reporting indoor tanning services excise taxes imposed on amounts paid on or after July 1, 2012, must be filed under the name and employer identification number (EIN) of the entity rather than under the name and EIN of the disregarded entity’s owner. Thus, this rule affects returns of this tax that are due on or after October 31, 2012.

For taxes imposed under section 5000B on amounts paid before July 1, 2012, the IRS will treat payments made by a disregarded entity, or other actions taken by a disregarded entity, with respect to the indoor tanning services excise tax as having been made or taken by the owner of that entity. Thus, for such periods, the owner of a disregarded entity will be treated as satisfying its obligations with respect to the indoor tanning services excise tax if those obligations are satisfied either: (i) by the owner itself or (ii) by the disregarded entity on behalf of the owner.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. 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.

### **Drafting Information**

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their 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.

### **Amendments to the Regulations**

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

#### PART 1--INCOME TAX

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

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

Par. 2. Section 1.1361-4 is amended by adding paragraph (a)(8)(iii) to read as follows:

§1.1361-4 Effect of QSub election.

(a) \* \* \*

(8) \* \* \*

(iii) [Reserved]. For further guidance, see §1.1361-4T(a)(8)(iii).

\* \* \* \* \*

Par. 3. Section 1.1361-4T is added to read as follows:

§1.1361-4T Effect of QSub election (temporary).

(a)(1) through (a)(8)(ii) [Reserved]. For further guidance, see §1.1361-4(a)(1) through (a)(8)(ii).

(iii) Rule for Chapter 49 tax liabilities--(A) In general. A qualified subchapter S subsidiary (QSub) is treated as a separate corporation for purposes of--

(1) Federal tax liabilities imposed by Chapter 49 of the Internal Revenue Code;

(2) Collection of tax imposed by Chapter 49 of the Internal Revenue Code; and

(3) Claims of a credit or refund related to the tax imposed by Chapter 49 of the Internal Revenue Code.

(B) Effective/applicability date for Chapter 49 liabilities. Paragraph (a)(8)(iii)(A) of this section applies to taxes imposed on amounts paid on or after July 1, 2012.

(C) Expiration date. The applicability of paragraph (a)(8)(iii) of this section expires on June 22, 2015 or such earlier date as may be determined under amendments to the regulations issued after June 22, 2012.

(a)(9) through (d) [Reserved]. For further guidance, see §1.1361-4(a)(9) through (d).

#### PART 301--PROCEDURE AND ADMINISTRATION

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

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

Par. 5. Section 301.7701-2 is amended by adding new paragraphs (c)(2)(vi) and (e)(9), and adding and reserving paragraph (e)(8), to read as follows:

#### §301.7701-2 Business entities; definitions.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) [Reserved]. For further guidance, see §301.7701-2T(c)(2)(vi).

\* \* \* \* \*

(e) \* \* \*

(8) [Reserved]

(9) [Reserved]. For further guidance, see §301.7701-2T(e)(9).

Par. 6. Section 301.7701-2T is amended as follows:

1. Paragraphs (a) through (e)(4) are revised.
2. Paragraph (e)(9) is added.

The revisions and addition read as follows:

§301.7701-2T Business entities; definitions (temporary).

(a) through (c)(2)(v) [Reserved]. For further guidance, see §301.7701-2(a) through (c)(2)(v).

(vi) Tax liabilities with respect to the indoor tanning services excise tax--

(A) In general. Notwithstanding any other provision of §301.7701-2, §301.7701-2(c)(2)(i) (relating to certain wholly owned entities) does not apply for purposes of--

(1) Federal tax liabilities imposed by Chapter 49 of the Internal Revenue Code;

(2) Collection of tax imposed by Chapter 49 of the Internal Revenue Code; and

(3) Claims of a credit or refund related to the tax imposed by Chapter 49 of the Internal Revenue Code.

(B) Treatment of entity. An entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 is treated as a corporation with respect to items described in paragraph (c)(2)(vi)(A) of this section.

(d) through (e)(4) [Reserved]. For further guidance, see §301.7701-2(d) through (e)(4).

\* \* \* \* \*

(9) Indoor tanning services excise tax--(i) Effective/applicability date.

Paragraph (c)(2)(vi) of this section applies to taxes imposed on amounts paid on or after July 1, 2012.



(ii) Expiration date. The applicability of paragraph (c)(2)(vi) of this section expires on or before June 22, 2015 or such earlier date as may be determined under amendments to the regulations issued after June 22, 2012.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: June 11, 2012

Emily S. McMahon

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012-15422 Filed 06/22/2012 at 8:45 am; Publication Date: 06/25/2012]