agent for the group with respect to the entire consolidated return year (including the portion of the year preceding the date on which the new common parent became the common parent)) and the former Domestic Substitute Agent will no longer be the agent for the group for any part of that year.

(B) *Years preceding the year the new common parent becomes the common parent.* If after the Commissioner's designation of a Domestic Substitute Agent the group remains in existence with a new common parent, and such new common parent is a domestic corporation (determined without regard to section 7874, a section 953(d) election, or section 269B), the Commissioner may designate the new common parent as the agent for the group for any of the group's prior taxable years (for which the due date (without extensions) for filing returns is after March 14, 2006) in which the new common parent was a member of the group. For this purpose, the new common parent is treated as having been a member of the group for any taxable year it is primarily liable for the group's income tax liability.

(v) *Replacement of Domestic Substitute Agent by the Commissioner.* The Commissioner may at any time, with or without a request from any member of the group, designate a replacement for a Domestic Substitute Agent (or a successor to such agent).

(5) *Deemed § 1.1502–77(d) designation*—(i) *Section 1.1502–78 adjustments.* If the Commissioner designates a Domestic Substitute Agent under this paragraph (j), it will be treated as a designation of a substitute agent under § 1.1502–77(d) for the purposes of § 1.1502–78.

(ii) *Default Substitute Agent.* If the Domestic Substitute Agent goes out of existence and has a single successor that is eligible to be a Domestic Substitute Agent, such successor becomes the Domestic Substitute Agent and is treated as a default substitute agent under § 1.1502–77(d)(2). See § 1.1502–77(d)(4) regarding the consequences of the successor's failure to notify the Commissioner of its status as a default substitute agent. The default substitute agent shall use procedures in section 9 of Rev. Proc. 2002–43 (2002–2 C.B. 99) or a corresponding provision of a successor revenue procedure for notification. (See § 601.601(d)(2)(ii) of this chapter.)

(6) *Request that IRS designate a Domestic Substitute Agent*—(i) *Original designation.* If the common parent of the group is a Foreign Common Parent, and the IRS has not designated a Domestic Substitute Agent, one or more members of the group may request the IRS to make a designation for taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. Such request is deemed to be a request under § 1.1502–77(d)(3)(i). Members of the group shall use the procedures in section 10 of Rev. Proc. 2002–43 (2002–2 C.B. 99) or a corresponding provision of a successor revenue procedure for this purpose. (See § 601.601(d)(2)(ii) of this chapter.)

(ii) *Request that IRS replace a previously designated substitute agent.* If the IRS designates a Domestic Substitute Agent pursuant to this paragraph (j), one or more members of the group may request that the IRS replace the designated Domestic Substitute Agent with another member (or successor to another member). Such a request is deemed to be a request pursuant to § 1.1502–77(d)(3)(ii). Members of the group shall use the procedures in section 11 of Rev. Proc. 2002–43 (2002–2 C.B. 99) or a corresponding provision of a successor revenue procedure for this purpose. (See § 601.601(d)(2)(ii) of this chapter.)

(7) *Effective Date.* This paragraph (j) applies to taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. The applicability of this paragraph (j) expires on or before March 9, 2009.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 9, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–2438 Filed 3–9–06; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9253]

RIN 1545–AY92

Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the withholding of tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons and related requirements governing collection, deposit, refunds, and credits of withheld amounts under sections 1461 through 1463. Additionally, this document contains final regulations under sections 6049 and 6114. These regulations affect persons making payments of U.S. source income to foreign persons and foreign persons claiming benefits under a U.S. income tax treaty.

DATES: *Effective date:* These regulations are effective March 14, 2006. The removal of § 1.1441–1(e)(4)(vii)(G) is effective as of January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ethan Atticks, (202) 622–3840 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final rule have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1484.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information 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

In Treasury Decision 8734 (1997–2 C.B. 109 [62 FR 53387]), the Treasury Department and the IRS issued comprehensive regulations under chapter 3 (sections 1441–1464) and subpart B of Part III of Subchapter A of chapter 61 (sections 6041 through 6050T) of the Internal Revenue Code (Code). Those regulations were amended by TD 8804 (1999–1 C.B. 793 [63 FR 72183]), TD 8856 (2000–1 C.B. 298 [64 FR 73408]), TD 8881 (2000–1 C.B. 1158 [65 FR 32152]), and TD 9023 (2002–2 C.B. 955 [67 FR 70310]) (collectively the current regulations). The current regulations are generally effective as of January 1, 2001.

In Notice 2001–4 (2001–1 C.B. 267), Notice 2001–11 (2001–1 C.B. 464), and

Notice 2001–43 (2001–2 C.B. 72), the Treasury Department and the IRS announced the intention to amend the current regulations under sections 1441, 6049 and 6114 to address the matters discussed in those notices.

On March 30, 2005, the IRS and Treasury published a notice of proposed rulemaking (REG–125443–01, 2005–16 I.R.B. 912) in the **Federal Register** (70 FR 16189) (hereinafter the proposed regulations). The proposed regulations contained provisions to implement certain changes announced in those notices and other changes.

No public hearing regarding the proposed regulations was requested or held. However, certain written comments were received. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments

These final regulations finalize the provisions of the proposed regulations with only two areas of modification. The comments received and the modifications made in response to those comments are described below.

A. Taxpayer Identification Number (TIN) Requirement for Certain Foreign Grantor Trusts

Section 1.1441–1(e)(4)(vii)(G) provides that a TIN must be stated on a withholding certificate from a person representing to be a foreign grantor trust with 5 or fewer grantors. Generally, if no TIN is provided, the withholding certificate is considered invalid. See § 1.1441–1(e)(2)(ii).

The proposed regulations eliminated this TIN requirement for withholding certificates provided by such persons to qualified intermediaries (QIs), but retained it for withholding certificates provided by such persons to other withholding agents if the certificate was executed on or before December 31, 2003.

Commentators requested that these final regulations adopt the provisions of the proposed regulations that remove the TIN requirement but with an effective date that applies to certificates executed and provided to all withholding agents, not just QIs, on or after January 1, 2001, the effective date of the current regulations. The commentators state that the retroactive effective date for withholding certificates provided to the other withholding agents is consistent with the IRS and Treasury's recognition that the TIN requirement in the current regulations is not serving to enhance enforcement objectives. Further, the commentators state that for administrative reasons the effective dates should be consistent whether or not the withholding certificate is provided to a QI or other withholding agent. The IRS and Treasury agree with this comment. Accordingly, under these final regulations, a withholding certificate executed on or after January 1, 2001, and provided to a QI or other withholding agent by a person representing to be a foreign grantor trust with five or fewer grantors does not need to state a TIN for such certificate to be valid.

B. Reporting of Treaty-Based Return Positions

Section 301.6114–1(a) provides that, if a taxpayer takes a return position that a tax treaty overrules or modifies any provision of the Code and thereby effects a reduction of any tax at any time, the taxpayer must disclose that return position, either on a statement attached to the return or on a return filed for the purpose of making such disclosure. When applicable, § 301.6114–1(d) generally requires a taxpayer to attach Form 8833, Treaty Based Return Position Disclosure Under Section 6114 or 7701(b), to its U.S. Federal income tax return. Section 301.6114–1(b) states that reporting is required unless it is expressly waived and provides a nonexclusive list of particular positions for which reporting is required. Section 301.6114–1(c) then provides a list of specific exceptions from the general reporting requirements of § 301.6114–1(a) and (b).

The proposed regulations provided that reporting under § 301.6114–1(b)(4)(ii) is required only for the positions specifically described in paragraphs (b)(4)(ii)(A) and (B), or (C) or (D) of that section. Further, the proposed regulations provided that reporting under § 301.6114–1(b)(4)(ii)(D) is waived for taxpayers that are not individuals or States and that receive amounts of income subject to withholding that do not exceed $10,000 in the aggregate for the taxable year. See Prop. Reg. § 301.6114–1(c)(1)(i), and (7).

Commentators suggested that the $10,000 threshold applicable to taxpayers that are not individuals or States should be increased to $500,000, the threshold amount for reporting under § 301.6114–1(b)(4)(ii)(C) (addressing payments to a related foreign person where benefits are claimed under a treaty that contains a limitation on benefits article). The commentators noted that entities typically have substantially higher levels of investment as compared to individuals and therefore a higher threshold is warranted. The commentators concluded that the administrative burden placed on these entities by the regulations is not appropriate when considering the benefit to the government by the disclosure. As a result, the commentators believed that the exception should be modified.

In addition, the commentators suggested that reporting be waived for pension funds and certain other persons required to report under § 301.6114–1(b)(4)(ii)(D), which requires reporting whenever a treaty imposes ''any condition'' in addition to a person's residence in the treaty country for entitlement to treaty benefits. The commentators stated that because, for example, an income tax treaty may condition a pension fund's entitlement to a reduced rate of taxation on dividends on the pension fund not being engaged in a trade or business, and because a pension fund rarely will violate such a condition, from a practical standpoint the sole requirement for entitlement to treaty benefits is the residence of the pension fund. Therefore, the commentators suggested that requiring the pension fund to file an income tax return and make a treaty based disclosure of its position imposes an unnecessary administrative burden. Accordingly, the commentators believed that it was appropriate to interpret the regulations such that the trade or business requirement described above with respect to pension funds is not ''any condition'' described in § 301.6114–1(b)(4)(ii)(D). To clarify this point, the commentators requested that the final regulations waive reporting for pension funds.

Commentators also requested that § 301.6114–1(c)(6), which waives reporting for amounts required to be reported under section 6038A on a Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (under sections 6038A and 6038(c) of the Internal Revenue Code),'' to the extent permitted under the form or accompanying instructions, be activated by including such permission in the form or instructions.

The IRS and Treasury considered the comments discussed above, as well as the general bases for requiring reporting under section 6114. The IRS and Treasury agree that reporting under section 6114 should not be required in certain circumstances where the payment is properly reported on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and the withholding agent is a U.S. person,

or a foreign person that has entered into an agreement that provides for IRS audit. Thus, in response to the comments described above, the following amendments are made to the waiver provisions of § 301.6114–1(c).

First, rather than activating the exception for amounts required to be reported under section 6038A on Form 5472, paragraph (c)(6) of the regulations is revised to replace this provision regarding Form 5472 with a provision waiving reporting for amounts properly reported on Form 1042–S by a withholding agent that is a reporting corporation within the meaning of section 6038A(a). Second, a new paragraph (c)(7) is added to provide that reporting is waived for amounts properly reported on Form 1042–S by a withholding agent that is a U.S. financial institution, a QI, or a withholding foreign partnership (WP) or withholding foreign trust (WT) if the beneficial owner is a direct account holder of the U.S. financial institution or QI or a direct beneficiary or owner of the WP or WT. Third, a new paragraph (c)(8) is added which replaces the provision in the proposed regulations (see Prop. Reg. § 301.6114–1(c)(7)) waiving reporting for taxpayers that are not individuals or States and that receive amounts of income subject to withholding that do not exceed the $10,000 threshold. New paragraph (c)(8) contains a waiver for taxpayers that are not individuals or States that receive amounts that have been properly reported on Form 1042–S, do not exceed $500,000, and are not received through an intermediary or flow-through entity.

Notwithstanding the discussion above, the final regulations provide that the waivers from reporting in paragraph (c)(6), (7) and (8) do not apply to the extent that reporting is specifically required under the instructions to Form 8833.

Finally, these final regulations clarify that reporting under section 301.6114–1(b)(4)(ii) is required only for the positions specifically described in paragraphs (b)(4)(ii)(A) and (B), or (C) or (D).

Effect on Other Documents

Sections (V)(C), (D), and (E) of Notice 2001–4 (2001–1 C.B. 267), Notice 2001–11 (2001–1 C.B. 464), and Sections 2 and 3 of Notice 2001–43 (2001–2 C.B. 72), are superseded as of March 14, 2006.

Special Analyses

It has been determined that this Treasury decision 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 the regulations do not impose a new 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 Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the IRS and 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.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are 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 1.1441–1 is amended as follows:

■ 1. Paragraph (b)(2)(iv)(A) is revised.

■ 2. Paragraph (b)(3)(iii)(E) is added.

■ 3. Paragraph (c)(30) is added.

■ 4. Paragraph (e)(4)(vii)(G) is removed and paragraph (e)(4)(vii)(H) and (I) are redesignated as paragraph (e)(4)(vii)(G) and (H) respectively.

The revisions and additions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(2) * * *

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign person is a payment to a foreign person. However, a U.S. branch described in this paragraph (b)(2)(iv)(A) and a withholding agent (including another U.S. branch described in this paragraph (b)(2)(iv)(A)) may agree to treat the branch as a U.S. person for purposes of withholding on specified payments to the U.S. branch. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042–S under § 1.1461–1(c). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on Form W–8 as provided in paragraph (e)(3)(v) of this section and not a Form W–9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. In addition, a financial institution organized in a possession of the United States will be treated as a U.S. branch for purposes of this paragraph (b)(2)(iv)(A). The Internal Revenue Service (IRS) may approve a list of U.S. branches that may qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049–5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Internal Revenue Code. Also see § 1.6049–5(d)(1)(ii) for the treatment of U.S. branches as foreign payees under chapter 61 of the Internal Revenue Code.

* * * * *

(3) * * *

(iii) * * *

(E) *Certain payments for services.* A payment for services is presumed to be made to a foreign person if—

(*1*) The payee is an individual;

(*2*) The withholding agent does not know, or have reason to know, that the payee is a U.S. citizen or resident;

(*3*) The withholding agent does not know, or have reason to know, that the income is (or may be) effectively connected with the conduct of a trade or business within the United States; and

(*4*) All of the services for which the payment is made were performed by the payee outside of the United States.

* * * * *

(c) * * *

(30) *Possessions of the United States.* For purposes of the regulations under chapters 3 and 61 of the Internal Revenue Code, *possessions of the United States* means Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

* * * * *

Par. 3. Section 1.1441–3 is amended by revising paragraphs (c)(3) and (e)(2) to read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(c) * * *

(3) *Special rules in the case of distributions from a regulated investment company*—(i) *General rule.* If the amount of any distributions designated as being subject to section 852(b)(3)(C) or 5(A), or 871(k)(1)(C) or (2)(C), exceeds the amount that may be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding if the designations were based on a reasonable estimate (made pursuant to the same procedures as described in paragraph (c)(2)(ii)(A) of this section) and the adjustments to the amount withheld are made within the time period described in paragraph (c)(2)(ii)(B) of this section. Any adjustment to the amount of tax due and paid to the IRS by the withholding agent as a result of underwithholding shall not be treated as a distribution for purposes of section 562(c) and the regulations thereunder. Any amount of U.S. tax that a foreign shareholder is treated as having paid on the undistributed capital gain of a regulated investment company under section 852(b)(3)(D) may be claimed by the foreign shareholder as a credit or refund under § 1.1464–1.

(ii) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether a payment is a distribution designated as subject to section 852(b)(3)(C) or (5)(A), or 871(k)(1)(C) or (2)(C), a withholding agent that is not the distributing regulated investment company may, absent actual knowledge or reason to know otherwise, rely on the designations that the distributing company represents have been made in accordance with paragraph (c)(3)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the regulated investment company to reasonably estimate the required amounts or to properly communicate the relevant information to the withholding agent shall be imputed to the distributing company. In such a case, the IRS may collect from the distributing company any underwithheld amount and subject the company to applicable interest and penalties as a withholding agent.

* * * * *

(e) * * *

(2) *Payments in foreign currency.* If the amount subject to withholding tax is paid in a currency other than the U.S. dollar, the amount of withholding under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and converting the amount withheld into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) in effect on that date. A withholding agent making regular or frequent payments in foreign currency may use a month-end spot rate or a monthly average spot rate. In addition, such a withholding agent may use the spot rate on the date the amount of tax is deposited (within the meaning of § 1.6302–2(a)), provided that such deposit is made within seven days of the date of the payment giving rise to the obligation to withhold. A spot rate convention must be used consistently for all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner. The U.S. dollar amount so determined shall be treated by the beneficial owner as the amount of tax paid on the income for purposes of determining the final U.S. tax liability and, if applicable, claiming a refund or credit of tax.

* * * * *

■ **Par. 4.** In § 1.1441–6, paragraph (b)(1) is revised to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are satisfied. See section 894 and the regulations thereunder to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, as described in § 1.1441–1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore account, documentary evidence described in paragraphs (c)(3), (4), and (5) of this section. See § 1.6049–5(e) for the definition of payments made outside the United States and § 1.6049–5(c)(1) for the definition of offshore account. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) contains information necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) of this section and § 1.1441–6(g)) and the representations that the beneficial owner derives the income under section 894 and the regulations thereunder, if required, and meets the limitation on benefits provisions of the treaty, if any. The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are incorrect (and subject to the standards of knowledge in § 1.1441–7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under § 1.1441–1(e)(3)(iv) and 1.1441–5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and

limitation on benefits have been provided in connection with documentary evidence. If the beneficial owner is related to the person obligated to pay the income, within the meaning of section 267(b) or 707(b), the withholding certificate must also contain a representation that the beneficial owner will file the statement required under § 301.6114–1(d) of this chapter (if applicable). The requirement to file an information statement under section 6114 for income subject to withholding applies only to amounts received during the taxpayer's taxable year that, in the aggregate, exceed $500,000. See § 301.6114–1(d) of this chapter. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. See § 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

* * * * *

■ **Par. 5.** Section 1.6049–5 is amended as follows:

■ 1. Paragraph (c)(1) is revised.

■ 2. Paragraphs (c)(5)(i), (ii), (iii), (iv), (v) and (vi) are redesignated as paragraphs (c)(5)(i)(A), (B), (C), (D), (E), and (F), respectively.

■ 3. A new heading is added to paragraph (c)(5)(i).

■ 4. New paragraph (c)(5)(ii) is added.

The revisions and additions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts and for possessions accounts.* A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of a payment made outside the United States to an offshore account, in the case of a payment made to a U.S. possessions account or, in the case of broker proceeds described in § 1.6045–1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an *offshore account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (*i.e.*, other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an offshore account. For purposes of this paragraph (c)(1), a *U.S. possessions account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution located within a possession of the United States. For the definition of a payment made outside the United States, see paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person (including, but not limited to, documentary evidence described in § 1.1441–6(c)(3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Internal Revenue Code must contain all of the information that is necessary to complete a Form 1042-S for that payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441–1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441–1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441–1(c)(26), even though the partnership or trust account is maintained in the United States.

* * * * *

(5) * * * (i) *Definition.* * * *

(ii) *Reporting by U.S. payors in U.S. possessions.* U.S. payors are not required to report on Form 1099 income that is from sources within a possession of the United States and that is exempt from taxation under section 931, 932, or 933, each of which sections exempts certain income from sources within a possession of the United States paid to a bona fide resident of that possession. For purposes of this paragraph (c)(5)(ii), a U.S. payor may treat the beneficial owner as a bona fide resident of the possession of the United States from which the income is sourced if, prior to payment of the income, the U.S. payor can reliably associate the payment with valid documentation that supports the claim of residence in the possession of the United States from which the income is sourced. This paragraph (c)(5)(ii) shall not apply if the U.S. payor has actual knowledge or reason to know that the documentation is unreliable or incorrect or that the income does not satisfy the requirements for exemption under section 931, 932, or 933. For the rules determining whether income is from sources within a possession of the United States, see section 937(b) and the regulations thereunder.

* * * * *

PART 301—-PROCEDURE AND ADMINISTRATION

■ **Par. 6.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 7.** In § 301.6114–1 is amended as follows:

■ 1. Paragraphs (c)(1)(i) through (c)(1)(vii) are redesignated as paragraphs (c)(1)(ii) through (c)(1)(viii), respectively.

■ 2. New paragraph (c)(1)(i) is added.

■ 3. Paragraph (c)(6) is revised.

■ 4. Paragraphs (c)(7) and (8) are added.

The additions and revision read as follows:

§ 301.6114–1 Treaty-based return positions.

* * * * *

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

(i) For amounts received on or after January 1, 2001, reporting under paragraph (b)(4)(ii) is waived, unless reporting is specifically required under paragraphs (b)(4)(ii)(A) and (B) of this section, paragraph (b)(4)(ii)(C) of this section, or paragraph (b)(4)(ii)(D) of this section;

* * * * *

(6)(i) For taxable years ending after December 31, 2004, except as provided in paragraph (c)(6)(ii) of this section, reporting under paragraph (b)(4)(ii) of this section is waived for amounts received by a related party, within the meaning of section 6038A(c)(2), from a withholding agent that is a reporting corporation, within the meaning of section 6038A(a), and that are properly reported on Form 1042–S.

(ii) Paragraph (c)(6)(i) of this section does not apply to any amounts for which reporting is specifically required under the instructions to Form 8833.

(7)(i) For taxable years ending after December 31, 2004, except as provided

in paragraph (c)(7)(iv) of this section, reporting under paragraph (b)(4)(ii) of this section is waived for amounts properly reported on Form 1042–S (on either a specific payee or pooled basis) by a withholding agent described in paragraph (c)(7)(ii) of this section if the beneficial owner is described in paragraph (c)(7)(iii) of this section.

(ii) A withholding agent described in this paragraph (c)(7)(ii) is a U.S. financial institution, as defined in § 1.1441–1(c)(5) of this chapter, a qualified intermediary, as defined in § 1.1441–1(e)(5)(ii) of this chapter, a withholding foreign partnership, as defined § 1.1441–5(c)(2)(i) of this chapter, or a withholding foreign trust, as defined in § 1.1441–5(e)(5)(v) of this chapter.

(iii) A beneficial owner described in this paragraph (c)(7)(iii) of this section is a direct account holder of a U.S. financial institution or qualified intermediary, a direct partner of a withholding foreign partnership, or a direct beneficiary or owner of a simple or grantor trust that is a withholding foreign trust. A beneficial owner described in this paragraph (c)(7)(iii) also includes an account holder to which a qualified intermediary has applied section 4A.01 or 4A.02 of the qualified intermediary agreement, contained in Revenue Procedure 2000–12 (2000–1 C.B. 387), (as amended by Revenue Procedure 2003–64, (2003–2 C.B. 306); Revenue Procedure 2004–21 (2004–1 C.B. 702); Revenue Procedure 2005–77 (2005–51 I.R.B. 1176) (see § 601.601(b)(2) of this chapter) a partner to which a withholding foreign partnership has applied section 10.01 or 10.02 of the withholding foreign partnership agreement, and a beneficiary or owner to which a withholding foreign trust has applied section 10.01 or 10.02 of the withholding foreign trust agreement, contained in Revenue Procedure 2003–64, (2003–2 C.B. 306), (as amended by Revenue Procedure 2004–21 (2004–1 C.B. 702); Revenue Procedure 2005–77 (2005–51 I.R.B. 1176); (see § 601.601(b)(2) of this chapter).

(iv) Paragraph (c)(7)(i) of this section does not apply to any amounts for which reporting is specifically required under the instructions to Form 8833.

(8)(i) For taxable years ending after December 31, 2004, except as provided in paragraph (c)(8)(ii) of this section, reporting under paragraph (b)(4)(ii) of this section is waived for taxpayers that are not individuals or States and that receive amounts of income that have been properly reported on Form 1042–S, that do not exceed $500,000 in the aggregate for the taxable year and that are not received through an account with an intermediary, as defined in § 1.1441–1(c) (13), or with respect to interest in a flow-through entity, as defined in § 1.1441–1(c)(23), (ii) The exception contained in paragraph (c)(8)(i) of this section does not apply to any amounts for which reporting is specifically required under the instructions to Form 8833.

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Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 27, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–2443 Filed 3–13–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9254]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code of 1986. The regulations apply when a member of a consolidated group transfers subsidiary stock at a loss. They also apply when a member holds loss shares of subsidiary stock and the subsidiary ceases to be a member of the group. These regulations finalize § 1.1502–35T without substantive change.

DATES: *Effective Date:* These regulations are effective March 9, 2006.

Applicability Date: For dates of applicability, see §§ 1.1502–21(h)(8), 1.1502–32(h)(6), 1.1502–35(f), and 1.1502–35(j).

FOR FURTHER INFORMATION CONTACT: Theresa Abell (202) 622–7700 or Martin Huck (202) 622–7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1828.

The collection of information in these regulations is in §§ 1.1502–35(c), 1.1502–35(c)(5)(iii), and 1.1502–35(g)(3). This information is required by the IRS to verify compliance with section 1502 of the Code. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed 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.

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.

Books or records relating to the 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

On September 19, 1991, the IRS and Treasury Department published § 1.1502–20 (the loss disallowance rule, or LDR). See TD 8364, 56 FR 47379. The LDR addressed two problems arising in the consolidated return context: the circumvention of *General Utilities* repeal and the duplication of loss.

On July 6, 2001, in *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), the Court of Appeals for the Federal Circuit held that the duplicated loss provisions of the LDR were an invalid exercise of regulatory authority. In response to the court's decision, the IRS and Treasury Department promulgated two regulations to replace the LDR. The first, § 1.337(d)–2T (temporary *General Utilities* regulation),