

Proposed Rules

Federal Register

Vol. 74, No. 175

Friday, September 11, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26 and 301

[REG-136563-07]

RIN 1545-BG89

Generation-Skipping Transfers (GST) Section 6011 Regulations and Amendments to the Section 6112 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide rules relating to the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax under section 6011 of the Internal Revenue Code (Code), conforming amendments under sections 6111 and 6112, and rules relating to the preparation and maintenance of lists with respect to reportable transactions under section 6112. The regulations affect taxpayers participating in listed transactions and transactions of interest and material advisors to such transactions. The proposed regulations also contain rules under section 6112 that affect material advisors to reportable transactions. These regulations provide guidance regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to a reportable transaction. These regulations also clarify guidance regarding resignation agreements.

DATES: Written or electronic comments and requests for a public hearing must be received by December 10, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-136563-07), room 5203, Internal Revenue Service, P.O. 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-136563-07), 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-136563-07).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Charles D. Wien, (202) 622-3070; concerning the submissions of comments and requests for hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1686. Responses to these collections of information are mandatory. 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 OMB control number assigned by the Office of Management and Budget.

On August 3, 2007, the IRS published final regulations under § 301.6112-1 (TD 9352; 72 FR 43154). These regulations propose to modify those regulations.

The estimated annual burden per recordkeeper for the collection of information in § 301.6112-1T is 100 hours and the estimated number of recordkeepers is 500.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and 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.

Books and records relating to these collections 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 return information are confidential, as required by 26 U.S.C. 6103.

Background

This document proposes to amend 26 CFR part 26 to provide rules for purposes of the generation-skipping transfer tax that require the disclosure of listed transactions and transactions of interest by certain taxpayers on their Federal tax returns under section 6011. This document also proposes to modify and clarify some of the rules under 26 CFR part 301 relating to the disclosure obligations of material advisors under section 6111 and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112.

On July 31, 2007, the IRS and Treasury Department issued final regulations under section 6011 (TD 9350; 72 FR 43146), 6111 (TD 9351; 72 FR 43157) and 6112 (TD 9352; 72 FR 43154) (the July 2007 regulations) that were published in the **Federal Register** on August 3, 2007. In the July 2007 regulations, the IRS and Treasury Department amended 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide that certain taxpayers would be required to disclose transactions of interest, in addition to listed transactions, on their Federal tax returns under section 6011. These regulations propose to amend 26 CFR part 26 to add similar rules under section 6011 for the tax on generation-skipping transfers. The July 2007 regulations also amended 26 CFR part 301 to provide rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under section 6112. These proposed regulations make minor clarifications and modifications to the rules under section 6112.

Explanation of Provisions

The regulations should encompass transactions that purport to reduce or eliminate the generation-skipping transfer tax as listed transactions or transactions of interest and require the disclosure of these transactions under section 6011. Although these regulations are being proposed, the IRS and Treasury Department do not have plans to identify any such transaction at this time. Clarifying amendments are being made to the regulations under sections 6111 and 6112 as a result of the generation-skipping transfer tax rules proposed under section 6011.

The IRS and Treasury Department are proposing to amend the regulations

under section 6112 to provide that, before a material advisor must make available to the IRS the list as described in § 301.6112-1(b), the material advisor will have a specified period of time to prepare the list after the list maintenance requirement first arises with respect to a reportable transaction. The specified period of time for a material advisor to prepare a list will be 30 calendar days or a period greater than 30 calendar days as may be specifically described in the published guidance designating a transaction as a reportable transaction. A request for a list under section 6112 made during the list preparation time period will be treated as having been made on the day after the list preparation time period ends.

In addition, the regulations make clarifications to the rules regarding designation agreements. A group of material advisors to a reportable transaction may designate by written agreement one material advisor from the group to maintain the list required under section 6112. The existence of a designation agreement, however, does not affect the ability of the IRS to request the list from any party to the designation agreement, or the obligation of any party receiving a request from the IRS to furnish the list as required under section 6112 and the related 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 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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most of the material advisors affected by these regulations are not small entities and for those material advisors that are small entities most of the information is already required under the current regulations. Also, the collection of information referenced in these regulations has been approved under OMB control number 1545-1686. The clarification and new information required by these proposed regulations add little or no new burden to those existing requirements. 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 notice of proposed rulemaking will be

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (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, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely 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 these regulations is Charles D. Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

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 parts 26 and 301 are proposed to be amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.
Section 26.6011-4 also issued under 26 U.S.C. 6011 * * *.

Par. 2. Section 26.6011-4 is added to read as follows:

§ 26.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance, and the listed transaction or transaction of interest involves a tax on generation-skipping transfers under chapter 13 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions and transactions of interest entered into on or after the date these regulations are published as final regulations in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111-3 is amended as follows:

1. Paragraphs (b)(2)(i)(A) and (b)(3)(i)(B) are amended by adding the language “26.6011-4,” after each occurrence of “25.6011-4,”.

2. Paragraphs (c)(2) and (c)(13) are amended by adding the language “26.6011-4,” after “25.6011-4,”.

3. Paragraph (i)(1) is revised.
The revision reads as follows:

§ 301.6111-3 Disclosure of reportable transactions.

* * * * *

(i) *Effective/applicability date*—(1) *In general.* This section applies to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under this section on or after November 2, 2006. Paragraphs (b)(2)(i)(A), (b)(3)(i)(B), (c)(2), and (c)(13) of this section apply to transactions with respect to which a material advisor makes a tax statement under this section after the date these regulations are published as final regulations in the **Federal Register**. Paragraph (h) of this section applies to ruling requests received on or after November 2, 2006. Otherwise, the rules that apply on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect prior to the date these regulations are published as final

regulations in the **Federal Register** (see 26 CFR part 301 revised as of April 1, 2009).

* * * * *

Par. 5. Section 301.6112-1 is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraphs (c)(3) and (c)(12) are amended by adding the language "26.6011-4," after "25.6011-4,".
3. Paragraphs (f) and (g) are revised. The revisions read as follows:

§ 301.6112-1 Material advisors of reportable transactions must keep lists of advisees, etc.

* * * * *

(b) * * * (1) *In general.* A separate list must be prepared and maintained for each reportable transaction. However, one list must be maintained for substantially similar transactions. A material advisor will have 30 calendar days from the date the list maintenance requirement first arises (see § 301.6111-3(b)(4) and paragraph (a) of this section) with respect to a reportable transaction to prepare the list that must be maintained under this section with respect to that transaction. The Commissioner in his discretion also may provide in published guidance designating a transaction as a reportable transaction a list preparation time period greater than 30 calendar days. If a list is requested under this section during the list preparation time period, the request for the list will be treated as having been made on the day after the list preparation time period ends. A list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. The Commissioner in his discretion may provide in published guidance a form or method for maintaining or furnishing the list.

* * * * *

(f) *Designation agreements.* If more than one material advisor is required to maintain a list of persons for a reportable transaction, in accordance with paragraph (b) of this section, the material advisors may designate by written agreement a single material advisor (the designated material advisor) to maintain the list or a portion of the list. A designation agreement does not relieve material advisors from their obligation to maintain the list in accordance with paragraph (b) of this section or to furnish the list to the IRS in accordance with paragraph (e)(1) of this section, but a designation agreement may allow one material advisor to maintain the list on behalf of the other material advisors who are a party to the designation agreement. A

material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete. The existence of a designation agreement does not affect the ability of the IRS to request the list from any party to the designation agreement. The IRS may request the list from any party to the designation agreement, and the party receiving the request must furnish the list to the IRS in accordance with paragraph (e)(1) of this section, regardless of whether the list was maintained by another party pursuant to the terms of a designation agreement.

(g) *Effective/applicability date.* In general, this section applies to transactions with respect to which a material advisor makes a tax statement under § 301.6111-3 on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under § 301.6111-3 on or after November 2, 2006. Paragraphs (b)(1), (c)(3), (c)(12), and (f) of this section apply to transactions with respect to which a material advisor makes a tax statement under § 301.6111-3 after the date these regulations are published as final regulations in the **Federal Register**. Otherwise, the rules that apply on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect prior to the date these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 301 revised as of April 1, 2009).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9-21665 Filed 9-10-09; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA-HQ-OPPT-2008-0483; FRL-8432-3]

RIN 2070-AJ36

Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for elemental mercury (CAS No. 7439-97-6) for use in flow meters, natural gas manometers, and pyrometers, except for use in these articles when they are in service as of the effective date of the final rule. This action would require persons who intend to manufacture (including import) or process elemental mercury for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. Persons subject to the provisions of this proposed rule would not be exempt from significant new use reporting if they import into the United States or process elemental mercury as part of an article. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments must be received on or before November 10, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0483, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0483. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2008-0483. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.