

these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do 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 its impact on small business.

#### Drafting Information

The principal author of these regulations is Karen Walny, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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. 863(a) and 7805  
\* \* \*

■ **Par. 2.** Section 1.863–10 is added to read as follows:

#### § 1.863–10 Source of income from a qualified fails charge.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, the source of income from a qualified fails charge shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(b) *Qualified business unit exception.* The source of income from a qualified fails charge shall be determined by reference to the residence of a qualified business unit (as defined in section 989) of a taxpayer if—

(1) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(2) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(3) The qualified business unit is engaged in the conduct of a trade or business in the country where it is a resident; and

(4) The transaction to which the qualified fails charge relates is

attributable to the qualified business unit. A transaction will be treated as attributable to a qualified business unit if it satisfies the principles of § 1.864–4(c)(5)(iii) (substituting “qualified business unit” for “U.S. office”).

(c) *Effectively connected income exception.* Qualified fails charge income that arises from a transaction any income from which is (or would be if the transaction produced income) effectively connected with a United States trade or business pursuant to § 1.864–4(c) is treated as from sources within the United States, and the income from the qualified fails charge is treated as effectively connected to the conduct of a United States trade or business.

(d) *Qualified fails charge.* For purposes of this section, a qualified fails charge is a payment that—

(1) Compensates a party to a transaction that provides for delivery of a designated security (as defined in paragraph (e) of this section) in exchange for the payment of cash (delivery-versus-payment settlement) for another party's failure to deliver the specified designated security on the settlement date specified in the relevant agreement; and

(2) Is made pursuant to—

(i) A trading practice or similar guidance approved or adopted by either an agency of the United States government or the Treasury Market Practices Group, or

(ii) Any trading practice, program, policy or procedure approved by the Commissioner in guidance published in the Internal Revenue Bulletin.

(e) *Designated security.* For purposes of this section, a *designated security* means any—

(i) Debt instrument (as defined in § 1.1275–1(d)) issued by the United States Treasury Department, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any Federal Home Loan Bank; or

(ii) Pass-through mortgage-backed security guaranteed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.

(g) *Effective/applicability date.* This section is effective on February 21, 2012. This section applies to a qualified fails charge paid or accrued on or after December 8, 2010.

#### § 1.863–10T [Removed]

■ **Par. 3.** Section 1.863–10T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 14, 2012.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury, Tax Policy.*

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#### DEPARTMENT OF THE TREASURY

##### Office of the Secretary

#### 31 CFR Part 1

#### RIN 1505–AC33

#### Privacy Act of 1974; Implementation

##### Correction

In rule document 2011–29385 appearing on pages 70640–70644 the issue of Tuesday, November 15, 2011 make the following correction:

#### § 1.36 [Corrected]

■ On page 70644, in § 1.36, in paragraph (g)(1)(viii), in the untitled table, the third row of the table should read: “IRS 90.002 . . . . Chief Counsel Litigation and Advice (Civil) Records”

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#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2012–0067]

#### RIN 1625–AA00

#### Safety Zone; Kinnickinnic River Containment and Cleanup; Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Kinnickinnic River in Milwaukee, Wisconsin. This zone is intended to restrict vessels from a portion of the Kinnickinnic River due to the petroleum cleanup efforts. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the removal of petroleum product from this area of the Kinnickinnic River.