

promulgate a general rule regarding the standard of review that must be met to justify proposed modifications to Commission-jurisdictional agreements under the Federal Power Act (FPA) and Natural Gas Act (NGA) that are not agreed to by the signatories (or their successors). The Commission noted that courts were divided as to whether, in the face of contractual silence, the Commission was required to apply the "public interest" standard of review or the "just and reasonable" standard of review to proposed modifications.² The NOPR thus focused on the standard of review applicable to proposed changes in contracts in the absence of contractual language specifying the standard of review preferred by the parties. The NOPR did not address other issues such as the showing needed to satisfy the "*Mobile-Sierra* presumption."³

3. The Commission, in the NOPR, proposed a regulation which provided that, in the absence of prescribed contractual language enabling the Commission to review proposed modifications to agreements that are not agreed to by the signatories (or their successors) under a "just and reasonable" standard of review, the Commission will review such proposed modifications under a "public interest" standard of review. The Commission concluded that the weight of court precedent supported application of the "public interest" standard when evaluating proposed changes to such contracts, unless the contract language expressly invokes the "just and reasonable" standard. The Commission stated that this standard would promote contract certainty. Additionally, the Commission recognized the importance of providing certainty and stability in competitive electric energy markets.

II. Discussion

4. There is no longer a need for a rulemaking regarding the default standard of review, as the Supreme Court has addressed the law in this area. Since issuance of the NOPR, the United States Supreme Court has addressed the *Mobile-Sierra* doctrine in *Morgan Stanley*. The Court held that the *Mobile-Sierra* doctrine is a presumption that

rates initially set in a freely negotiated contract meet the statutory just and reasonable requirement of the FPA.⁴ The Court explained that "parties could contract out of the *Mobile-Sierra* presumption by specifying in their contracts that a new rate filed with the Commission would supersede the contract rate," but otherwise "the *Mobile-Sierra* presumption remains the default rule."⁵

5. Because the Supreme Court in *Morgan Stanley* has since addressed the default standard, the Commission concludes that it is no longer necessary to adopt the regulation proposed in the NOPR. The Commission therefore withdraws the NOPR and terminates this rulemaking proceeding.

The Commission orders:

The Notice of Proposed Rulemaking is hereby withdrawn and Docket No. RM05-35-000 is hereby terminated.

By the Commission. Commissioners Kelly and Wellinghoff concurring with a separate joint statement attached.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

United States of America, Federal Energy Regulatory Commission.

Standard of Review for Modifications to Jurisdictional Agreements

Docket No. RM05-35-000

(Issued December 18, 2008.)

Kelly and Wellinghoff, Commissioners, *concurring*:

This order terminates the rulemaking proceeding on the standard of review for modifications to jurisdictional agreements, withdrawing the Notice of Proposed Rulemaking (NOPR) that the Commission issued in 2005. This order states that, since the issuance of the NOPR, the United States Supreme Court addressed the *Mobile-Sierra* doctrine, including the default standard of review, in *Morgan Stanley*.⁶ As a result, the majority finds that there is no longer a need for a rulemaking regarding the default standard of review.

We agree that the rulemaking proceeding on the standard of review for modifications to jurisdictional agreements should be terminated. However, we believe that in reaching that conclusion, it is appropriate to recognize not only the *Morgan Stanley* decision, but also the U.S. Court of

Appeals for the District of Columbia Circuit's recent decision in *Maine Public Utilities Commission v. FERC*.⁷ Because the Commission is bound by the rulings in *Morgan Stanley* and *Maine PUC*, we conclude that there is no longer a need for a rulemaking regarding the default standard of review.

For this reason, we concur with this order.

Suede G. Kelly,
Commissioner.
Jon Wellinghoff,
Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-150066-08]

RIN 1545-BI45

Guidance Regarding Foreign Base Company Sales Income

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 and Treasury Department are issuing temporary regulations relating to foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. The temporary regulations modify the foreign base company sales income regulations to address current business structures and practices, particularly the growing importance of contract manufacturing and other manufacturing arrangements. The temporary regulations, in general, will affect CFCs and their United States shareholders. The text of the temporary regulations also serves as the text of the proposed regulations. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by March 30, 2009. Outlines of the topics to be discussed at

² NOPR, FERC Stats. & Regs. ¶ 32,596 at P 8 (citing *Boston Edison Co. v. FERC*, 233 F.3d 60 (1st Cir. 2000)). The *Boston Edison* court stated that these issues would remain in a state of confusion until the Commission "squarely confronted the underlying issues." *Boston Edison*, 233 F.3d at 68.

³ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2739 (2008) (*Morgan Stanley*) (referring to *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*)).

⁴ *Id.* at 2737; *accord id.* at 2746.

⁵ *Id.* at 2739; *cf. Public Util. Dist. No. 1 v. FERC*, 471 F.3d 1053, 1075 (9th Cir. 2006), *aff'd and remanded sub nom., Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008).

⁶ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) (*Morgan Stanley*).

⁷ *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, petition for reh'g denied, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*) (discussing, among other issues, the circumstances in which it is appropriate to apply the *Mobile-Sierra* presumption).

the public hearing scheduled for April 20, 2009, at 10 a.m. must be received by April 2, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-150066-08), 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-150066-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-150066-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ethan Atticks, (202) 622-3840; concerning submissions of comments, hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at Richard.a.hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provision

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. These regulations, in general, will affect CFCs and their United States shareholders. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

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 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, these regulations have been submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the 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 the Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 20, 2009, beginning at 10 a.m. in the IRS Auditorium, 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 Constitution Avenue 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 comments or electronic comments by March 30, 2009, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 2, 2009. A period of 10 minutes will be allotted 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 regulations is Ethan Atticks of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 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 26 CFR part 1 continues to read in part as follows:

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

Par. 2. Section 1.954-3 is amended by revising paragraphs (b)(1)(i)(c), (b)(1)(ii)(a), (b)(1)(ii)(c), (b)(2)(i)(b), (b)(2)(i)(d), (b)(2)(ii)(a), (b)(2)(ii)(b), (b)(2)(ii)(e), (b)(4) Example (3), (c), and (d), and adding *Examples 8 and 9* to paragraph (b)(4), and adding paragraphs (e), (f) and (g) to read as follows:

§ 1.954-3 Foreign base company sales income.

* * * * *

(b) * * * (1) * * * (i) * * *
(c) [The text of the proposed amendments to § 1.954-3(b)(1)(i)(c) is the same as the text of § 1.954-3T(b)(1)(i)(c) published elsewhere in this issue of the **Federal Register**.]

(ii) * * * (a) [The text of the proposed amendments to § 1.954-3(b)(1)(ii)(a) is the same as the text of § 1.954-3T(b)(1)(ii)(a) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) [The text of the proposed amendments to § 1.954-3(b)(1)(ii)(c) is the same as the text of § 1.954-3T(b)(1)(ii)(c) published elsewhere in this issue of the **Federal Register**.]

(2) * * * (i) * * *
(b) [The text of the proposed amendments to § 1.954-3(b)(2)(i)(b) is the same as the text of § 1.954-3T(b)(2)(i)(b) published elsewhere in this issue of the **Federal Register**.]

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(d) [The text of the proposed amendments to § 1.954-3(b)(2)(i)(d) is the same as the text of § 1.954-3T(b)(2)(i)(d) published elsewhere in this issue of the **Federal Register**.]

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(ii) * * *
(a) [The text of the proposed amendments to § 1.954-3(b)(2)(ii)(a) is the same as the text of § 1.954-3T(b)(2)(ii)(a) published elsewhere in this issue of the **Federal Register**.]

(b) [The text of the proposed amendments to § 1.954-3(b)(2)(ii)(b) is the same as the text of § 1.954-3T(b)(2)(ii)(b) published elsewhere in this issue of the **Federal Register**.]

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(e) [The text of the proposed amendments to § 1.954-3(b)(2)(ii)(e) is the same as the text of § 1.954-3T(b)(2)(ii)(e) published elsewhere in this issue of the **Federal Register**.]

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(4) * * *

Example (3). [The text of the proposed amendments to § 1.954–3(b)(4) *Example 3* is the same as the text of § 1.954–3T(b)(4) *Example 3* published elsewhere in this issue of the **Federal Register**.]

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Example 8. [The text of the proposed amendments to § 1.954–3(b)(4) *Example 8* is the same as the text of § 1.954–3T *Example 8* published elsewhere in this issue of the **Federal Register**.]

Example 9. [The text of the proposed amendments to § 1.954–3(b)(4) *Example 9* is the same as the text of § 1.954–3T *Example 9* published elsewhere in this issue of the **Federal Register**.]

(e) [The text of the proposed amendments to § 1.954–3(e) is the same as the text of § 1.954–3T(e) published elsewhere in this issue of the **Federal Register**.]

(f) [The text of the proposed amendments to § 1.954–3(f) is the same as the text of § 1.954–3T(f) published elsewhere in this issue of the **Federal Register**.]

(g) [The text of the proposed amendments to § 1.954–3(g) is the same as the text of § 1.954–3T(g) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30729 Filed 12–24–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–148568–04]

RIN 1545–BD93

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document revises the notice of proposed rulemaking published in the **Federal Register** on January 3, 2006. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits under sections 6011 and 6302 of the Internal Revenue Code (Code). Those temporary regulations generally allow certain

employers to file a Form 944, “Employer’s ANNUAL Federal Tax Return,” rather than Form 941, “Employer’s QUARTERLY Federal Tax Return.” In addition to rules related to Form 944, those temporary regulations provide an additional method for employers who file Form 941 to determine whether the amount of accumulated employment taxes is considered de minimis. The temporary and proposed regulations affect taxpayers that file Form 941, “Employer’s QUARTERLY Federal Tax Return,” Form 944, “Employer’s ANNUAL Federal Tax Return,” and any related Spanish-language returns or returns for U.S. possessions. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 30, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148568–04), room 5203, Internal Revenue Service, POB 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–148568–04), 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–148568–04).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Audra M. Dineen at (202) 622–4910; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the federal employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements. The regulations concern the reporting and paying of income taxes withheld from wages and taxes under the Federal Insurance Contributions Act (FICA). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these

proposed regulations. The temporary and proposed regulations are part of the IRS’s effort to reduce taxpayer burden by permitting certain employers to file one return annually to report their employment tax liabilities instead of four quarterly returns.

Proposed Effective/Applicability Date

The regulations, as proposed, will apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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 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.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The regulations under sections 6011 and 6302 affect only a small number of taxpayers that file employment tax returns. Therefore, the Treasury Department and the IRS have determined that these regulations will not affect a substantial number of small entities. In addition, the Treasury Department and the IRS have determined that any impact on entities affected by the regulations will not be significant. The regulations merely allow certain employers to file their employment tax return annually rather than quarterly. Therefore, these regulations will reduce the burden on these employers, by reducing the number of returns they must file each year. Based on these facts, the IRS has determined that these regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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 (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 substance of the