

under section 101(a)(1) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. For this purpose, an employer-owned life insurance contract is a life insurance contract that (i) is owned by a person engaged in a trade or business and under which such person is directly or indirectly a beneficiary under the contract, and (ii) covers the life of an insured who is an employee with respect to the trade or business on the date the contract is issued. An applicable policyholder is generally a person who owns an employer-owned life insurance contract, or a related person as described in section 101(j)(3).

Section 101(j)(2) provides exceptions to the general rule of section 101(j)(1) in the case of certain employer-owned life insurance contracts with respect to which certain notice and consent requirements are met. Those exceptions are based either on (i) the insured's status as an employee within 12 months of death or as a highly compensated employee or highly compensated individual, or (ii) the extent to which death benefits are paid to a family member, trust, or estate of the insured employee, or are used to purchase an equity interest in the applicable policyholder from a family member, trust or estate.

Section 6039I provides that every applicable policyholder that owns one or more employer-owned life insurance contracts shall file a return, at such time and in such manner as the Secretary shall prescribe by regulations, showing for each year the contracts are owned—

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the policyholder has a valid consent for each insured employee (or, if not all such consents are obtained, the number of insured employees for whom such consent was not obtained).

Section 6039I(c) provides that any term used in section 6039I that is used in section 101(j) has the same meaning given that term by section 101(j).

Sections 101(j) and 6039I apply to life insurance contracts issued after August 17, 2006, except for a contract issued after that date pursuant to a section 1035 exchange for a contract issued

before that date. For this purpose, a material increase in the death benefit or other material change causes the contract to be treated as a new contract except that, in the case of a master contract within the meaning of section 264(f)(4)(E), the addition of covered lives is treated as a new contract only with respect to those additional covered lives.

These temporary regulations provide that the Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006. The regulations are effective on November 13, 2007, and apply to taxable years ending after that date.

Special Analyses

It has been determined that this temporary regulation 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 this regulation.

The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to this temporary regulation because the regulation does not impose a collection of information on small entities. Even though a substantial number of small businesses may be subject to the requirements of section 6039I, it is anticipated that whatever requirements the Commissioner may prescribe pursuant to this regulation will not impose a "significant economic impact" because the information requested will already be available to taxpayers and the burden of compliance will be minimal.

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 its impact on small business.

Drafting Information

The principal author of these regulations is Linda K. Boyd, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.6039I-1T also issued under 26 U.S.C. 6039I. * * *

■ **Par. 2.** Section 1.6039I-1T is added to read as follows:

§ 1.6039I-1T Reporting of certain employer-owned life insurance contracts (temporary).

(a) *In general.* The Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006.

(b) *Effective/applicability date.* These regulations are applicable for tax years ending after November 13, 2007.

(c) *Expiration date.* The applicability of this section expires on or before November 9, 2010.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: November 2, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7-22137 Filed 11-9-07; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9363]

RIN 1545-BD65

Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the requirements for filing corporate income tax returns and returns of organizations required to file returns under section 6033 on magnetic media pursuant to section 6011(e) of the Internal Revenue Code (Code). The term magnetic media includes any magnetic media permitted

under applicable regulations, revenue procedures, or publications, including electronic filing. The final regulations are necessary to update and clarify the rules and procedures for corporations and organizations that are required to file their returns electronically. The final regulations affect corporations, including electing small business corporations (S corporations), with assets of \$10 million or more that file Form 1120, U.S. Corporation Income Tax Return, or Form 1120S, U.S. Income Tax Return for an S Corporation; exempt organizations with assets of \$10 million or more that are required to file returns under section 6033, and private foundations or section 4947(a)(1) trusts that are required to file returns under section 6033.

DATES: *Effective Date:* These regulations are effective November 13, 2007.

Applicability Date: These regulations are applicable November 13, 2007.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 12, 2005, the IRS published a notice of proposed rulemaking (by cross reference to temporary regulations) and a notice of public hearing, (REG-130671-04) (70 FR 2075). The proposed regulations require certain large corporations, including S corporations, to file their corporate income tax returns electronically. The proposed regulations also require certain large exempt organizations, nonexempt charitable trusts, and exempt and nonexempt private foundations to electronically file those returns required to be filed under section 6033.

A public hearing was held on March 16, 2005. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The temporary regulations under sections 6011, 6033, and 6037 are removed.

Summary of Comments and Explanation of Revisions

1. Returns Covered

The proposed regulations required electronic filing of Forms 1120 and 1120S by corporations required to file at least 250 returns during the calendar year, required to file corporate income tax returns, and that had total assets of \$50 million or more as shown on Schedule L of their Form 1120 or 1120S for taxable years ending on or after December 31, 2005. The proposed regulations also required electronic

filing of Forms 1120 and 1120S by corporations required to file at least 250 returns during the calendar year, required to file corporate income tax returns, and that had total assets of \$10 million or more as shown on Schedule L of their Form 1120 or 1120S for taxable years ending on or after December 31, 2006. The proposed regulations also required electronic filing of Form 990, Return of Organization Exempt From Income Tax, by organizations required to file at least 250 returns during the calendar year, required to file Form 990 and that had, for a taxable year ending on or after December 31, 2005, total assets as of the end of the taxable year of \$100 million or more or that, for a taxable year ending on or after December 31, 2006, had total assets as of the end of the taxable year of \$10 million or more. The proposed regulations also required electronic filing of Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, regardless of total assets, by organizations required to file at least 250 returns during the calendar year that were required to file Form 990-PF for taxable years ending on or after December 31, 2006.

Except as described in the preamble, the final regulations clarify that the electronic filing requirement applies to all members of the Form 1120 and Form 1120S series of returns, including amended and superseding returns, and to all members of the Form 990 series of returns, including amended and superseding returns. A member of the Form 1120 series includes, for example, the Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.

The IRS currently does not have the capability to accept electronic filing of certain types of Form 1120, Form 1120S, and Form 990 series of returns, such as a Form 1120 for a taxpayer that has changed its accounting period, or a Form 990 or Form 990-PF for an organization not recognized as exempt or one that has an application for exempt status pending. These regulations thus exclude those returns from the electronic filing requirement. The IRS will announce the returns in the Form 1120, Form 1120S, and Form 990 series that are required to be filed electronically and the returns that are excluded from electronic filing under these regulations in its publications, forms and instructions, including those instructions and Frequently Asked Questions (FAQs) posted electronically to the IRS.gov Web site. The Treasury Department and the IRS intend to require electronic filing of additional corporate income tax returns, excise tax

returns and returns required to be filed under section 6033 in the Form 1120, Form 1120S, and Form 990 series as the IRS increases its capability to receive these forms electronically, provided that the Treasury Department and the IRS determine that filers are able to comply with the electronic filing requirements at a reasonable cost.

2. First Year and Last Year Exclusions

The proposed regulations provided exclusions from the requirement to file electronically for certain corporations and organizations that had not had a longstanding filing obligation. Under the proposed regulations, corporations and organizations were not required to file their returns electronically if they were not required to file a Form 1120, Form 1120S, Form 990, or Form 990-PF for the preceding taxable year or had not been in existence for at least one calendar year prior to the due date (not including extensions) of their Form 1120, Form 1120S, Form 990, or Form 990-PF. These transition rules were designed to relieve taxpayer burden during the first year of implementation of the mandatory electronic filing regulations, but caused unnecessary complexity in determining whether a corporation or other organization was entitled to the first year exclusion when the corporation or organization was a part of a reorganization. The Treasury Department and the IRS have determined that these transition rules are no longer necessary and that corporations and other organizations should be able to comply at a reasonable cost with the requirement to file returns electronically.

3. 250 Return Requirement

Under the proposed regulations, the determination of whether an entity is required to file at least 250 returns is made by aggregating all returns, regardless of type, that the entity is required to file over the calendar year, including, for example, income tax returns, returns required under section 6033, information returns, excise tax returns, and employment tax returns. The final regulations clarify that in the case of a short year return, an entity is required to file electronically if, during the calendar year which includes the short taxable year of the entity, the entity is required to file at least 250 returns of any type, including, for example, income tax returns, returns required under section 6033, information returns, excise tax returns, and employment tax returns.

4. Hardship Waiver

Three commentators requested that the IRS institute procedures allowing the Service to waive the requirement to file returns electronically. One commentator recommended that the final guidance on waivers include a clear definition of what constitutes justification for a waiver, and a flexible standard on when a filer would qualify for a waiver. One commentator contended that cost to the filer should be a principal factor in obtaining a hardship waiver. On November 28, 2005, the IRS issued Notice 2005–88, 2005–2 C.B. 1060, which provides procedures for filers to request a waiver of the requirement to electronically file their returns. Notice 2005–88 provides that in determining whether to approve or deny a waiver request, the IRS will consider the filer's ability to timely file its return electronically without incurring an undue economic hardship. The Notice provides that the IRS will generally grant waivers for filing returns electronically where the filer can demonstrate the undue hardship that would result by complying with the electronic filing requirement, including any incremental costs to the filer.

Another commentator contended that technological failures beyond the control of the filer should also not result in the assertion of penalties. For this reason, the commentator recommended that waivers be granted, especially during the first year or two during which a taxpayer is required to file electronically, in the following circumstances:

1. Where the software vendor used by the filer is unable to produce the software needed to e-file any return or schedule within a reasonable time period, perhaps six months before the end of the year for which the return is to be filed.

2. Where the filer discovers significant flaws in either the developer's software program or its own self-developed software during the first three months of the year in which the return is to be filed.

3. Where the filer after significant testing determines the need to switch software vendors in order to comply with the e-filing mandate.

4. Where the filer attempts to timely file the return electronically by the statutory deadline (including extensions), but transmission errors (such as Internet traffic, misrouting of information packets, or disconnects in the transmission) prevent the filing of the return.

Although Notice 2005–88 does not refer to these specific situations, the

Notice provides that the IRS will generally grant waivers for filing returns electronically where technology issues prevent the filer from filing its return electronically. The Treasury Department and the IRS believe, however, that it is the responsibility of the filer to review the capabilities and efficacy of the software they use to file their returns, to ensure that the software used will meet their specific filing requirements.

One commentator stated that there might be circumstances when an entity otherwise subject to the electronic filing requirements should be eligible for an automatic waiver as opposed to being required to file a formal waiver request. Another commentator recommended that the purchase and use of software developed by an approved vendor be sufficient evidence that a filer has made a good faith effort to comply with the regulations. The Treasury Department and the IRS believe that waiver requests should be considered on a case-by-case basis, based on each filer's particular facts and circumstances.

Additional guidance on situations in which returns are excluded from the electronic filing mandate is available in IRS Publication 4163, Modernized e-file Handbook for Authorized e-file Providers for Form 1120/1120S; IRS Publication 4206, Modernized e-File information for Authorized e-file Providers of Exempt Organization Filings; and on the *IRS.gov* Internet site.

5. Date of Filing

One commentator supported the concept and use of an electronic postmark, but requested clear and concise guidance as to when an electronically submitted return is deemed filed when such a return is rejected either because of transmission issues or IRS acceptance criteria. Notice 2005–88 provides that if the portion of a return required to be filed electronically is transmitted on or before the due date (including extensions) and is ultimately rejected, but the electronic return originator and the filer comply with the specific requirements for timely submission of the return, the return will be considered timely filed and any elections attached to the return will be considered valid. The Notice also provides that for taxable years ending on or after December 31, 2005, the IRS will allow the filer 20 calendar days from the date of first transmission to perfect the return for electronic resubmission.

6. Effective Dates.

Three commentators recommended that the IRS delay implementation of the requirement to file returns

electronically. Both Treasury and the IRS believe that the vendor software is available, that the IRS' systems can accommodate the electronic filing requirement and that implementation of the electronic filing mandate can be accomplished successfully without undue burden by filers. Through October 2006, over 500,000 corporations of all sizes successfully electronically filed their Forms 1120 or 1120S for 2005, of which over 18,000 were corporations with assets exceeding \$10 million. In addition, through December 2006, over 15,300 organizations of all sizes successfully electronically filed their Forms 990, 990–EZ or 990–PF for 2005. Accordingly, the recommendation to delay implementation has not been adopted.

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.

When an Agency issues a rulemaking proposal, the Regulatory Flexibility Act, 5 U.S.C. chapter 6 (RFA), requires the Agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Treasury decision affects corporations required to file corporate income tax returns that are required to file at least 250 returns during the calendar year and have total assets of \$10 million or more for taxable years ending on or after December 31, 2006. Section 601(3) of the RFA defines a small business as having the same meaning as “small business concern” under section 3 of the Small Business Act, 15 U.S.C. 632. The IRS estimates that of the 6,294,000 entities required to file Forms 1120 or 1120S, 22,000 entities are required to electronically file these Forms. The IRS estimates that of the 22,000 entities required to electronically file Forms 1120 or 1120S, there are 9,500 organizations that will be required to file the Forms 1120 or 1120S electronically that qualify as small businesses. The 9,500 corporation estimate is based on Large and Mid-Size Business Division's estimates of the

number of corporations that have assets between \$10 million and \$50 million as shown on their Schedule L of their Form 1120 or 1120S for taxable years ending on or after December 31, 2006, and that may have at least 250 employees based on the number of returns the corporation has filed, including Forms W-2. Therefore, the IRS has determined that this Treasury decision will have an impact on a substantial number of small businesses.

The Treasury decision also affects those organizations required to file Form 990 that are required to file at least 250 returns during the calendar year and have total assets of \$10 million or more for taxable years ending on or after December 31, 2006. The Treasury decision also affects those organizations that are required to file Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, regardless of total assets. Section 601(4) of the RFA defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field (for example, private hospitals and educational institutions). The IRS estimates that of the 263,000 entities that are required to file the Form 990, there are 6,000 organizations that will be required to file the Form 990 electronically that qualify as small organizations. The 6,000 organization estimate is based on Tax Exempt and Government Entities Division's estimates of the number of entities that have assets between \$10 million and \$100 million as shown on their Schedule L of their Form 990 for taxable years ending on or after December 31, 2006 and that may have at least 250 employees based on the number of returns the corporation has filed, including Forms W-2. The IRS also estimates that of the 85,000 entities that are required to file the Form 990-PF, there are 50 organizations that will be required to file the Form 990-PF electronically that qualify as small organizations. The 50 organizations estimate is based on Tax Exempt and Government Entities Division's estimates of the number of entities that may have at least 250 employees based on the number of returns the corporation has filed, including Forms W-2. Therefore, the IRS has determined that this Treasury decision will have an impact on a substantial number of small organizations.

The IRS has also determined, however, that the impact on entities affected by the proposed rule will not be significant. The IRS and Treasury Department note that these regulations only prescribe the method of filing

returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. The burden on small entities to purchase the software to file its returns electronically is minimal as the software is widely available. Pricing for electronic filing software varies considerably. In many instances, the price for electronic filing is bundled with other services and products. Some software providers offer volume discounts, or unlimited filing for a fixed price. Some software providers offer free electronic filing if the taxpayer purchases a suite of other products or services. And in many cases, taxpayers will use the services of a tax practitioner to prepare and electronically file their return. Accordingly, direct comparison of the cost for electronic filing is difficult. The cost for the software to file returns electronically for small entities from software providers starts from \$12.50 per return for on-line electronic filing of Forms 1120, and is free for Form 990 filers with less than \$100,000 in gross revenue.

Finally, the IRS has provided procedures for filers to request a waiver of the requirement to electronically file their returns. Notice 2005-88 provides that in determining whether to approve or deny a waiver request, the IRS will consider the filer's ability to timely file its return electronically without incurring an undue economic hardship.

Accordingly, the IRS hereby certifies that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these final regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

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 1.6011-5 is added to read as follows:

§ 1.6011-5 Required use of magnetic media for corporate income tax returns.

The return of a corporation that is required to be filed on magnetic media under § 301.6011-5 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

§ 1.6011-5T [Removed]

■ **Par. 3.** Section 1.6011-5T is removed.

■ **Par. 4.** Section 1.6033-4 is added to read as follows:

§ 1.6033-4 Required use of magnetic media for returns by organizations required to file returns under section 6033.

The return of an organization that is required to be filed on magnetic media under § 301.6033-4 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

§ 1.6033-4T [Removed]

■ **Par. 5.** Section 1.6033-4T is removed.

■ **Par. 6.** Section 1.6037-2 is added to read as follows:

§ 1.6037-2 Required use of magnetic media for income tax returns of electing small business corporations.

The return of an electing small business corporation that is required to be filed on magnetic media under § 301.6037-2 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

§ 1.6037-2T [Removed]

■ **Par. 7.** Section 1.6037-2T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 8.** The authority citation for part 301 is amended by removing the entries

for “Section 301.6011–5T”, “Section 301–6033–4T”, and “Section 301.6037–2T” and adding entries, in numerical order, to read as follows:

Authority: 26 U.S.C. 7805 * * *
 Section 301.6011–5 also issued under 26 U.S.C. 6011. * * *
 Section 301.6033–4 also issued under 26 U.S.C. 6033. * * *
 Section 301.6037–2 also issued under 26 U.S.C. 6037. * * *

■ **Par. 9.** Section 301.6011–5 is added to read as follows:

§ 301.6011–5 Required use of magnetic media for corporate income tax returns.

(a) *Corporate income tax returns required on magnetic media*—(1) A corporation required to file a corporate income tax return on Form 1120, “U.S. Corporation Income Tax Return,” under § 1.6012–2 of this chapter must file its corporate income tax return on magnetic media if the corporation is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, or instructions. In prescribing revenue procedures, publications, forms, or instructions, the Commissioner may direct the type of magnetic media filing. (See § 601.601(d)(2) of this chapter.)

(2) All members of a controlled group of corporations must file their corporate income tax returns on magnetic media if the aggregate number of returns required to be filed by the controlled group of corporations is at least 250.

(b) *Waiver.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a corporation fails to file a corporate income tax return on magnetic media when required to do so by this section, the corporation is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6651–1(c) and rules similar to the rules in § 301.6724–1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms, or instructions. (See § 601.601(d)(2) of this chapter).

(2) *Corporation.* The term *corporation* means a corporation as defined in section 7701(a)(3).

(3) *Controlled group of corporations.* The term *controlled group of corporations* means a group of corporations as defined in section 1563(a).

(4) *Corporate income tax return.* The term *corporate income tax return* means a Form 1120, “U.S. Corporation Income Tax Return,” along with all other related forms, schedules, and statements that are required to be attached to the Form 1120, and all members of the Form 1120 series of returns, including amended and superseding returns.

(5) *Determination of 250 returns.* For purposes of this section, a corporation or controlled group of corporations is required to file at least 250 returns if, during the calendar year ending with or within the taxable year of the corporation or the controlled group, the corporation or the controlled group is required to file at least 250 returns of any type, including information returns (for example, Forms W–2, Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short year return, a corporation is required to file at least 250 returns if, during the calendar year which includes the short taxable year of the corporation, the corporation is required to file at least 250 returns of any type, including information returns (for example, Forms W–2, Forms 1099), income tax returns, employment tax returns, and excise tax returns. If the corporation is a member of a controlled group, the determination of the number of returns includes all returns required to be filed by all members of the controlled group during the calendar year ending with or within the taxable year of the controlled group.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(5) of this section:

Example. The taxable year of Corporation X, a fiscal year taxpayer with assets in excess of \$10 million, ends on September 30. During the calendar year ending December 31, 2007, X was required to file one Form 1120, “U.S. Corporation Income Tax Return,” 100 Forms W–2, “Wage and Tax Statement,” 146 Forms 1099–DIV, “Dividends and Distributions,”

one Form 940, “Employer’s Annual Federal Unemployment (FUTA) Tax Return,” and four Forms 941, “Employer’s Quarterly Federal Tax Return.” Because X is required to file 252 returns during the calendar year that ended within its taxable year ending September 30, 2008, X is required to file its Form 1120 electronically for its taxable year ending September 30, 2008.

(f) *Effective/applicability dates.* This section applies to corporate income tax returns for corporations that report total assets at the end of the corporation’s taxable year that equal or exceed \$10 million on Schedule L of their Form 1120, for taxable years ending on or after December 31, 2006, except for the application of the short year rules in paragraph (d)(5) of this section, which is applicable for taxable years ending on or after November 13, 2007.

§ 301.6011–5T [Removed]

■ **Par. 10.** Section 301.6011–5T is removed.

■ **Par. 11.** Section 301.6033–4 is added to read as follows:

§ 301.6033–4 Required use of magnetic media for returns by organizations required to file returns under section 6033.

(a) *Returns by organizations required to file returns under section 6033 on magnetic media.* An organization required to file a return under section 6033 on Form 990, “Return of Organization Exempt from Income Tax,” or Form 990–PF, “Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation,” must file its Form 990 or 990–PF on magnetic media if the organization is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year ending with or within its taxable year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, or instructions. In prescribing revenue procedures, publications, forms, or instructions, the Commissioner may direct the type of magnetic media filing. (See § 601.601(d)(2) of this chapter.)

(b) *Waiver.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If an organization required to file a return under section 6033 fails to file an information return on magnetic media when required to do so by this section, the organization is deemed to have failed to file the return.

(See section 6652 for the addition to tax for failure to file a return.) In determining whether there is reasonable cause for failure to file the return, § 301.6652-2(f) and rules similar to the rules in § 301.6724-1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms or instructions. (See § 601.601(d)(2) of this chapter).

(2) *Return required under section 6033.* The term *return required under section 6033* means a Form 990, "Return of Organization Exempt from Income Tax," and Form 990-PF, "Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation," along with all other related forms, schedules, and statements that are required to be attached to the Form 990 or Form 990-PF, and all members of the Form 990 series of returns, including amended and superseding returns.

(3) *Determination of 250 returns.* For purposes of this section, an organization is required to file at least 250 returns if, during the calendar year ending with or within the taxable year of the organization, the organization is required to file at least 250 returns of any type, including information returns (for example, Forms W-2, Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short year return, an organization is required to file at least 250 returns if, during the calendar year which includes the short taxable year of the organization, the organization is required to file at least 250 returns of any type, including information returns (for example, Forms W-2, Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(3) of this section. In the example, the organization is a calendar year taxpayer:

Example. In 2006, Organization T, with total assets in excess of \$10 million, is required to file one Form 990, "Return of Organization Exempt from Income Tax," 200 Forms W-2, "Wage and Tax Statement," one Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," four

Forms 941, "Employer's Quarterly Federal Tax Return," and 60 Forms 1099-MISC, "Miscellaneous Income." Because T is required to file 266 returns during the calendar year, T must file its 2006 Form 990 electronically.

(f) *Effective/applicability dates.* This section applies to any organization required to file Form 990 for a taxable year ending on or after December 31, 2006, that has total assets as of the end of the taxable year of \$10 million or more. This section applies to any organization required to file Form 990-PF for taxable years ending on or after December 31, 2006, except for the application of the short year rules in paragraph (d)(3) of this section, which is applicable for taxable years ending on or after November 13, 2007.

§ 301.6033-4T [Removed]

■ **Par. 12.** Section 301.6033-4T is removed.

■ **Par. 13.** Section 301.6037-2 is added to read as follows:

§ 301.6037-2 Required use of magnetic media for returns of electing small business corporation.

(a) *Returns of electing small business corporation required on magnetic media.* An electing small business corporation required to file an electing small business return on Form 1120S, "U.S. Income Tax Return for an S Corporation," under § 1.6037-1 of this chapter must file its Form 1120S on magnetic media if the small business corporation is required by the Internal Revenue Code and regulations to file at least 250 returns during the calendar year ending with or within its taxable year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, or instructions. In prescribing revenue procedures, publications, forms, or instructions, the Commissioner may direct the type of magnetic media filing. (See § 601.601(d)(2) of this chapter).

(b) *Waiver.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver also will be subject to the terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If an electing small business corporation fails to file a return on magnetic media when required to do so by this section, the corporation is deemed to have failed to file the return. (See section 6651 for the addition to tax for failure to file a return.) In

determining whether there is reasonable cause for failure to file the return, § 301.6651-1(c) and rules similar to the rules in § 301.6724-1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, publications, forms, or instructions. (See § 601.601(d)(2) of this chapter).

(2) *Corporation.* The term *corporation* means a corporation as defined in section 7701(a)(3).

(3) *Electing small business corporation return.* The term *electing small business corporation return* means a Form 1120S, "U.S. Income Tax Return for an S Corporation," along with all other related forms, schedules, and statements that are required to be attached to the Form 1120S, and all members of the Form 1120S series of returns, including amended and superseding returns.

(4) *Electing small business corporation.* The term *electing small business corporation* means an S corporation as defined in section 1361(a)(1).

(5) *Determination of 250 returns.* For purposes of this section, a corporation is required to file at least 250 returns if, during the calendar year ending with or within the taxable year of the corporation, the corporation is required to file at least 250 returns of any type, including information returns (for example, Forms W-2, Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short year return, a corporation is required to file at least 250 returns if, during the calendar year which includes the short taxable year of the corporation, the corporation is required to file at least 250 returns of any type, including information returns (for example, Forms W-2, Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(5) of this section. In the example, the corporation is a calendar year taxpayer:

Example. In 2007, Corporation S, an electing small business corporation with

assets in excess of \$10 million, is required to file one Form 1120S, "U.S. Corporation Income Tax Return," 100 Forms W-2, "Wage and Tax Statement," 146 Forms 1099-DIV, "Dividends and Distributions," one Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," and four Forms 941, "Employer's Quarterly Federal Tax Return." Because S is required to file 252 returns during the calendar year, S is required to file its 2007 Form 1120S electronically.

(f) *Effective/applicability dates.* This section applies to returns of electing small business corporations that report total assets at the end of the corporation's taxable year that equal or exceed \$10 million on Schedule L of Form 1120S for taxable years ending on or after December 31, 2006, except for the application of the short year rules in paragraph (d)(5) of this section, which is applicable for taxable years ending on or after November 13, 2007.

§ 301.6037-2T [Removed]

■ **Par. 14.** Section 301-6037-2T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: November 6, 2007.

Eric Solomon,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9365]

RIN 1545-BE90

Railroad Track Maintenance Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations that provide rules for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified railroad track maintenance expenditures paid or incurred by a Class II railroad or Class III railroad and other eligible taxpayers during the taxable year. These final regulations reflect changes to the law made by the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006.

DATES: *Effective Date:* These regulations are effective on November 13, 2007.

Applicability Date: For dates of applicability, see § 1.45G-1(g).

FOR FURTHER INFORMATION CONTACT:

David Selig, (202) 622-3040 (not a toll-free number).

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 (44 U.S.C. 3507(d)) under control number 1545-2031.

The collection of information in these final regulations is in § 1.45G-1(d). This information is required to enable the IRS to verify the assignments of railroad track miles made under section 45G(b).

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 this collection of information must be retained as long as their contents might 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

This document contains amendments to 26 CFR part 1 to provide regulations under section 45G of the Internal Revenue Code (Code). Section 45G was added to the Code by section 245(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418) (AJCA), and was modified by section 403(f) of the Gulf Opportunity Zone Act of 2005, Public Law 109-135 (119 Stat. 2577), and section 423(a) of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922) (TRHCA). On September 8, 2006, the IRS and Treasury Department published in the **Federal Register** temporary and proposed regulations (REG-142270-05) under section 45G (71 FR 53009, 71 FR 53053). The IRS and Treasury Department issued a correction notice for the temporary regulations in TD 9286 on December 8, 2006 (71 FR 71039). No requests were received to testify on the proposed regulations and, accordingly, no public hearing was held. Written and electronic comments responding to the proposed regulations were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision and the corresponding temporary regulations are removed.

General Overview

Section 38 allows a credit for the taxable year for, among other things, the current year business credit. The current year business credit is the sum of the credits listed in section 38(b). Section 245(c)(1) of the AJCA amended section 38(b) to add to the list of credits the railroad track maintenance credit (RTMC) determined under section 45G(a).

Section 45G(a) provides that, for purposes of section 38, the RTMC for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures (QRTME) paid or incurred by an eligible taxpayer during the taxable year.

Section 45G(b) imposes limitations on the amount of the RTMC for any taxable year. The credit allowed under section 45G(a) may not exceed \$3,500 multiplied by the sum of (1) the number of miles of railroad track owned by, or leased to, the eligible taxpayer as of the close of the taxable year, and (2) the number of miles of railroad track assigned to the eligible taxpayer by a Class II railroad or Class III railroad that owns or leases the track as of the close of the taxable year.

Section 45G(c) defines an eligible taxpayer to mean any Class II railroad or Class III railroad, and any person who transports property using the rail facilities of such a railroad, or who furnishes railroad-related property or services to such a railroad, but only with respect to miles of railroad track assigned to such person by a Class II railroad or Class III railroad.

Section 45G(d), as amended by section 423(a) of the TRHCA, defines the term QRTME to mean gross expenditures (whether or not chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

Section 45G(e) defines the terms Class II railroad and Class III railroad to have the respective meanings given those terms by the Surface Transportation Board (STB).

Under section 45G(f), section 45G applies to QRTME paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008. The amendments to section 45G(d) made by section 423(a) of the TRHCA apply retroactively to taxable