

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[TD 9362]

RIN 1545-BG23

## Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to temporary regulations (TD 9362) that were published in the *Federal Register* on Wednesday, November 7, 2007 (72 FR 62771) relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

**DATES:** The correction is effective December 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

## Background

The temporary regulations (TD 9362) that are the subject of the correction are under section 905(c) of the Internal Revenue Code.

## Need for Correction

As published, temporary regulations (TD 9362) contain errors that may prove to be misleading and are in need of clarification.

## List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following amendments:

## 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 1.905-3T is amended by revising the eighth sentence of

paragraph (d)(3)(iii) *Example.* (i), the first sentence of paragraph (d)(3)(iii) *Example.* (ii), and the third and last sentences of paragraph (d)(3)(iii) *Example.* (iii) as follows:

**§ 1.905-3T Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination (temporary).**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(iii) \* \* \*

*Example.* \* \* \*

(i) \* \* \* In 2009, CFC paid its actual foreign tax liability for 2008 of 80u. \* \* \*

(ii) *Result in 2009.* If the 20u overaccrual of tax for 2008 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,020u, CFC's general category post-1986 foreign income taxes would be \$280, and P would be deemed to pay \$27.45 of tax with respect to the 2008 distribution of 100u ( $100u/1020u \times \$280 = \$27.45$ ). \* \* \*

(iii) \* \* \* As determined in 2011, CFC's post-1986 undistributed earnings for 2009 are 1350u (1,100u as revised for 2008, less 100u distributed in 2008, plus 350u earned in 2009), and its post-1986 foreign income taxes for 2009 are \$281.82 (\$200 as revised for 2008, less \$18.18 deemed paid in 2008, plus \$100 accrued for 2009). As redetermined in 2011, P's deemed paid credit with respect to the 100u distribution from CFC in 2009 is \$20.88 ( $100u/1350u \times \$281.82$ ). \* \* \*

■ **Par. 3.** Section 1.905-4T is amended by revising the last sentence of paragraph (b)(4) and the second sentence of paragraph (f)(2)(ii) as follows:

**§ 1.905-4T Notification of foreign tax redetermination (temporary).**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* Because the date for notifying the IRS of the foreign tax redetermination under paragraph (b)(1)(ii) of this section precedes the date of the opening conference concerning the examination of the return for X's 2008 taxable year, paragraph (b)(3) of this section does not apply, and X must notify the IRS of the foreign tax redetermination by filing a amended return, Form 1118, and the statement required in paragraph (c) of this section for the 2008 taxable year by September 15, 2010.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) \* \* \* Such notification must be filed no later than the due date (with extensions) of the original return for the taxpayer's first taxable year following

the taxable year in which these regulations are first applicable. \* \* \*

**LaNita Van Dyke,**

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## Internal Revenue Service

## 26 CFR Part 1

[TD 9362]

RIN 1545-BG23

## Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains a correction to temporary regulations (TD 9362) that were published in the *Federal Register* on Wednesday, November 7, 2007 (72 FR 62771) relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

**DATES:** The correction is effective December 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

## Background

The temporary regulations (TD 9362) that are the subject of the correction are under section 905(c) of the Internal Revenue Code.

## Need for Correction

As published, temporary regulations (TD 9362) contain an error that may prove to be misleading and is in need of clarification.

## Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9362), which were the subject of FR Doc. E7-21766, is corrected as follows:

On page 62779, column 2, under the paragraph heading "Effective/ Applicability Date", last line of the first paragraph of the column, the language "are first effective." is corrected to read "are first applicable."

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel (Procedure and Administration).*

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BILLING CODE 4830-01-P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2702

#### Freedom of Information Act Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the "Commission") is publishing final revisions to its rules implementing the Freedom of Information Act ("FOIA") in light of its experience under the rules, the need to update its fee schedules, and changes in implementing the FOIA mandated by Executive Order 13392.

**DATES:** *Effective date:* These revised rules will take effect on December 19, 2007.

*Applicability date:* The final rules will apply to FOIA requests initiated after the rules take effect. The final rules also will apply to further proceedings in matters pending on the effective date, except to the extent that such application would be infeasible or unfair, in which event the former rules would continue to apply.

**ADDRESSES:** Questions may be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202-434-9944.

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202-434-9935; fax 202-434-9944.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Commission is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety

and Health Act of 1977 (the "Mine Act"). Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate.

On October 17, 2007, the Commission published proposed revisions to its rules implementing the FOIA and requested written comments to be submitted by November 16, 2007. 72 FR 58790. Upon request, the Commission subsequently reopened the comment period and accepted comments through November 30, 2007. 72 FR 65494. The Commission received comments from the United Mine Workers of America.

The Commission proposed revisions to its FOIA rules that expanded its use of electronic records to better implement the 1996 amendments to the FOIA that addressed electronic record-keeping in federal agencies.

Additionally, the proposed rules described changes in the Commission's practices to ensure timely and effective responses to the public's requests for information as mandated by Executive Order 13392. 70 FR 75373. Further, based on its years of experience in implementing the FOIA, the Commission proposed certain changes in its FOIA rules to better reflect agency practice under the rules and to maximize its utilization of the internet to disseminate information. Finally, after a comprehensive review of its fee schedule, the proposed rules increased certain fees and moved others from the rules to the Commission's FOIA Guide for greater flexibility in adjusting the fees. The final rules retain much of the same text set forth in the proposed rules, with a few non-substantive revisions.

##### II. Section-by-Section Analysis

Set forth below is a summary of the comments received on the Commission's proposed rules and the final actions taken.

#### PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

##### 29 CFR 2702.1

The Commission is revising 29 CFR 2702.1 to clarify that the reference to "all designated information" to be made readily available to the public means information subject to disclosure pursuant to FOIA and the Commission's FOIA rules and not otherwise protected by law.

The last sentence in 29 CFR 2702.1 states that the scope of the Commission's FOIA regulations may be

limited to requests for information that is not presently the "subject of litigation before the Commission." 29 CFR 2702.1. As currently written, the rule could be read to exclude discovery records from the Commission's disclosure obligation under FOIA. In fact, however, such records could be subject to disclosure pursuant to FOIA, unless they fall under one of the nine exemptions provided in the statute. As proposed, the Commission is adding language stating that the Commission's FOIA rules do not affect discovery in adversary proceedings before the Commission, which are governed by the Commission's Rules of Procedure, 29 CFR Part 2700. This section also has been modified to clarify that the scope of the Commission's FOIA rules is limited to records or information of the agency or within its custody.

Finally, the Commission is amending 29 CFR 2702.1 by making two additional non-substantive revisions: (1) shortening the official title of the agency's guide to "FOIA Guide" and (2) including a reference to the Commission's Web site as an alternative means of obtaining the Commission's FOIA Guide.

##### 29 CFR 2702.3

##### Initial Requests

On December 14, 2005, the President issued Executive Order 13392, which contained several statements of government-wide FOIA policy as well as several additional planning and reporting requirements. The Executive Order requires agencies to appoint a Chief FOIA Officer who has "agency-wide responsibility for efficient and appropriate compliance with the FOIA." See Executive Order 13392, sec. 2(b)(1). Under the Commission's current rule, the Executive Director makes the initial determination on a FOIA request with the consent of a majority of the Commissioners. 29 CFR 2702.3(b). Pursuant to the Executive Order, the Commission is revising paragraphs (a) and (b) of 29 CFR 2702.3 to reflect the agency's current practice of initial FOIA requests being handled by the Chief FOIA Officer, instead of the Executive Director, without the consultation of the Commissioners. In addition, the Commission is revising paragraph (b) by deleting the requirement that a majority of the Commission must consent to the Chief FOIA Officer's initial determination of a request.

The commenter suggested that the Commission include in the rule language that specifically allows FOIA requests by e-mail and by fax. The Commission agrees and has revised the