

Approved: March 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

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26 CFR Parts 1 and 602

[TD 8593]

RIN 1545-AT16

Effective Dates of the Economic Performance Requirement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the effective dates of the economic performance requirement. Changes to the applicable laws were made by the Tax Reform Act of 1984. The regulations affect all taxpayers that use an accrual method of accounting.

DATES: These regulations are effective April 7, 1995.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT: James L. Atkinson, (202) 622-4950 (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. 3504(h)) under control number 1545-0917. The estimated annual reporting burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 3 hours. The annual recordkeeping burden per respondent varies from .01 hours to .1 hours, with an estimated average of .02 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, 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.

Background

On May 20, 1985, § 1.461-3T (TD 8024), relating to the effective dates of the economic performance requirement in section 461(h) of the Internal Revenue Code (Code) was published in the Federal Register (50 FR 20748). On June 7, 1990, a notice of proposed rulemaking (IA-258-84) concerning the economic performance requirement was published in the Federal Register (55 FR 23235). In addition to proposing general economic performance rules, the notice proposed redesignating the temporary regulations as § 1.461-7T. A public hearing on the regulations was held on October 22, 1990. On April 10, 1992, final and temporary regulations (TD 8408) regarding the economic performance requirement were published in the Federal Register (57 FR 12411). TD 8408 also redesignated § 1.461-3T as § 1.461-7T (without further change).

Written comments responding to the temporary regulations were received. In lieu of finalizing the temporary regulations issued as TD 8024 and redesignated by TD 8408, this Treasury decision removes § 1.461-7T and incorporates relevant provisions of those regulations into §§ 1.461-4 and 1.461-5, as appropriate.

Explanation of Provisions

Section 91(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 598) added section 461(h) to the Internal Revenue Code. This section generally provides that the amount of an item is not incurred under an accrual method of accounting until economic performance occurs.

Section 91(g)(1) of the Tax Reform Act of 1984 provides that except as otherwise provided, section 461(h) of the Code applies to amounts that would be allowable as a deduction after July 18, 1984, under the law in effect before the enactment of section 461(h) (cut-off method). Alternatively, a taxpayer may elect to treat the application of section 461(h) as a change in accounting method to which section 481(a) applies. A taxpayer that makes this election may elect to apply the new method of accounting as of either July 19, 1984 (part-year change in method), or the first day of the taxable year that includes July 19, 1984 (full-year change in method).

On May 20, 1985, the IRS issued temporary regulations (TD 8024) relating to the general section 461(h) effective date, the date of electing alternative effective dates, the manner of making the elections, the scope of the elections, and the section 481(a)

adjustment required by the elections. A detailed description of the regulations is set forth in the preamble to TD 8024.

After having considered the public comments received in connection with the temporary regulations, the Service is removing § 1.461-7T and incorporating the relevant provisions of the temporary regulations into §§ 1.461-4 and 1.461-5. Specifically, §§ 1.461-4 and 1.461-5 have been revised to clarify that all references to § 1.461-7T refer to § 1.461-7T as it appears in 26 CFR part 1 as revised April 1, 1995. Although this clarification refers to taxable years ending before April 7, 1995, however, it is not intended to extend the applicability of provisions previously set forth in § 1.461-7T beyond the dates originally provided in those temporary regulations. The reference to April 7, 1995, is necessary only to satisfy requirements of the Office of the Federal Register. In addition, § 1.461-4(k)(1) is revised to include special effective date rules for interest. These rules previously appeared in Q&A-12 of § 1.461-7T. Finally, § 1.461-5(d) has been revised to include an explanation of the term type of item for purposes of the recurring item exception. This explanation previously appeared in Q&A-3(d) of § 1.461-7T.

Rev. Proc. 94-32, 1994-1 C.B. 627, provides guidance regarding requests to make or revoke an election to ratably accrue real property taxes under section 461(c) for the taxpayer's first taxable year beginning after December 31, 1992. This Treasury decision does not affect the application of Rev. Proc. 94-32.

Effective Dates

These regulations are applicable for amounts that would be allowable as a deduction after April 7, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is James L. Atkinson, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other

personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

PARAGRAPH 1. The authority citation for part 1 is amended by removing the entry for § 1.461-7T to read in part as follows:

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

§ 1.461-0 [Amended]

PAR. 2. Section 1.461-0 is amended by removing the entry for § 1.461-7T.

PAR. 3. Section 1.461-4 is amended as follows:

- 1. Paragraph (k)(1) is revised;
 - 2. Paragraphs (m)(1)(i), (ii), and (iii) are revised;
 - 3. Paragraph (m)(2)(ii) is revised.
- The revisions read as follows:

§ 1.461-4 Economic performance.

* * * * *

(k) *Special effective dates*—(1) *In general.* Except as otherwise provided in this paragraph (k), section 461(h) and this section apply to liabilities that would, under the law in effect before the enactment of section 461(h), be allowable as a deduction or otherwise incurred after July 18, 1984. For example, the economic performance requirement applies to all liabilities arising under a workers compensation act or out of any tort that would, under the law in effect before the enactment of section 461(h), be incurred after July 18, 1984. For taxable years ending before April 7, 1995, see Q&A-2 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995), which provides an election to make this change in method of accounting applicable to either the portion of the first taxable year that occurs after July 18, 1984 (part-year change method), or the entire first taxable year ending after July 18, 1984 (full-year change method). With respect to the effective date rules for interest, section 461(h) applies to interest accruing under any obligation (whether or not evidenced by a debt instrument) if the obligation is incurred in any

transaction occurring after June 8, 1984, and is not incurred under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred. Interest accruing under an obligation described in the preceding sentence is subject to section 461(h) even if the interest accrues before July 19, 1984. Similarly, interest accruing under any obligation incurred in a transaction occurring before June 9, 1984, (or under a written contract which was binding on March 1, 1984, and at all times thereafter until the obligation is incurred) is not subject to section 461(h) even to the extent the interest accrues after July 18, 1984.

* * * * *

(m) *Change in method of accounting required by this section*—(1) *In general.*

(i) For taxable years ending before April 7, 1995, the part-year change in method election described in Q&A-2 through Q&A-6 and Q&A-8 through Q&A-10 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995);

(ii) For taxable years ending before April 7, 1995, the full-year change in method election described in Q&A-2 through Q&A-6 and Q&A-8 through Q&A-10 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995); or

(iii) For taxable years ending before April 7, 1995, if no election is made, the cut-off method described in Q&A-1 and Q&A-11 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995).

(2) * * *

(ii) *Retroactive change in method of accounting for long-term contracts and payment liabilities.* For the first taxable year beginning after December 31, 1989, or the first taxable year beginning after December 31, 1990, a taxpayer is granted the consent of the Commissioner to change its method of accounting for long-term contract liabilities described in paragraph (d)(2)(ii) of this section and payment liabilities described in paragraph (g) of this section (other than liabilities arising under a workers compensation act or out of any tort described in paragraph (g)(2) of this section) to comply with the provisions of this section. The change must be made in accordance with paragraph (m)(1)(ii) or (m)(1)(iii) of this section, except the effective date is the first day of the first taxable year beginning after December 31, 1989, or the first day of the first taxable year beginning after December 31, 1990. For taxable years ending before April 7, 1995, the taxpayer may make the change in method of accounting, including a full-year change in method election under paragraph (m)(1)(ii) of this

section and Q&A-5 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995), by filing an amended return for such year, provided the amended return is filed on or before October 7, 1992.

Par. 4. Section 1.461-5 is amended as follows:

- 1. Paragraph (d)(1) is revised.
- 2. Paragraphs (d)(2) (i) and (ii) are revised.

The revised provisions read as follows:

§ 1.461-5 Recurring item exception.

* * * * *

(d) *Time and manner of adopting the recurring item exception*—(1) *In general.*

The recurring item exception is a method of accounting that must be consistently applied with respect to a type of item, or for all items, from one taxable year to the next in order to clearly reflect income. A taxpayer is permitted to adopt the recurring item exception as part of its method of accounting for any type of item for the first taxable year in which that type of item is incurred. Except as otherwise provided, the rules of section 446(e) and § 1.446-1(e) apply to changes to or from the recurring item exception as a method of accounting. For taxable years ending before April 7, 1995, see Q&A-7 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995) for rules concerning the time and manner of adopting the recurring item exception for taxable years that include July 19, 1984. For purposes of this section, items are to be classified by type in a manner that results in classifications that are no less inclusive than the classifications of production costs provided in the full-absorption regulations of § 1.471-11(b) and(c), whether or not the taxpayer is required to maintain inventories.

(2) *Change to the recurring item exception method for the first taxable year beginning after December 31, 1991*—(i) *In general.* For the first taxable year beginning after December 31, 1991, a taxpayer is granted the consent of the Commissioner to change to the recurring item exception method of accounting. A taxpayer is also granted the consent of the Commissioner to expand or modify its use of the recurring item exception method for the first taxable year beginning after December 31, 1991. For each trade or business for which a taxpayer elects to use the recurring item exception method, the taxpayer must use the same method of change (cut-off or full-year change) it is using for that trade or business under § 1.461-4(m). For taxable year ending before April 7, 1995, see Q&A-11 of § 1.461-7T (as it appears in 26 CFR part 1 revised April

1, 1995) for an explanation of how amounts are taken into account under the cut-off method (except that, for purposes of this paragraph (d)(2), the change applies to all amounts otherwise incurred on or after the first day of the first taxable year beginning after December 31, 1991). For taxable years ending before April 7, 1995, see Q&A-6 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995) for an explanation of how amounts are taken into account under the full-year change method (except that the change in method occurs on the first day of the first taxable year beginning after December 31, 1991). For taxable years ending before April 7, 1995, the full-year change in method may result in a section 481(a) adjustment that must be taken into account in the manner described in Q&A-8 and Q&A-9 of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995) (except that the taxable year of change is the first taxable year beginning after December 31, 1991).

(ii) *Manner of changing to the recurring item exception method.* For the first taxable year beginning after December 31, 1991, a taxpayer may change to the recurring item exception method by accounting for the item on its timely filed original return for such taxable year (including extensions). For taxable years ending before April 7, 1995, the automatic consent of the Commissioner is limited to those items accounted for under the recurring item exception method on the timely filed return, unless the taxpayer indicates a wider scope of change by filing the statement provided in Q&A-7(b)(2) of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995).

* * * * *

§ 1.461-7T [Removed]

Par. 5. Section 1.461-7T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by removing the entry for 1.461-3T from the table and adding the following entries in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.461-4	1545-0917
1.461-5	1545-0917
* * * * *	* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: April 5, 1995.
Leslie Samuels,
Assistant Secretary of the Treasury.
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DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 934
North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the North Dakota regulatory program (hereinafter referred to as the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to and additions of rules pertaining to: areas unsuitable for mining; permit applications (environmental monitoring plans); permit application approval procedures; permit revisions, renewals, and transfer or sale; performance bond; regrading performance standards; sediment pond performance standards; contemporaneous reclamation performance standards; and enforcement actions. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations, address required program amendments, clarify ambiguities, correct cross-references, and improve program efficiency.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, Federal Register (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated November 10, 1994, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXI, Administrative Record No. ND-V-01, State Program Amendment Tracking System No. ND-031-FOR). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(u) and at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise or add are: NDAC 69-05.2-04-07(3)(a), lands unsuitable for mining; NDAC 69-05.2-05-09, permit applications (environmental monitoring plans); NDAC 69-05.2-06-01(2), permit applications (identification of interests); NDAC 69-05.2-06-02(6), permit applications (compliance information); NDAC 69-05.2-10-03(5), criteria for permit approval; NDAC 69-05.2-11-02(1)(d), permit revisions; NDAC 69-05.2-11-03(5)(c), permit renewals; NDAC 69-05.2-11-06(1)(c), transfer, sale, or assignment of permit rights; NDAC 69-05.2-12-09(2), performance bond (period of liability); NDAC 69-05.2-15-02(2)(a), performance standards (suitable plant growth materials); NDAC 69-05.2-16-09 (7) and (20), performance standards (sediment ponds); NDAC 69-05.2-21-01(2), performance standards (backfilling and grading, timing requirements); and NDAC 69-05.2-28-03(b), inspection and enforcement (cessation orders).

OSM announced receipt of the proposed amendment in the December 9, 1994, Federal Register (59 FR 63738), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. ND-V-06). Because no one