social purpose. The purposes and activities of a club, and not its name, determine whether it is organized for business, pleasure, recreation, or other social purpose. Clubs organized for business, pleasure, recreation, or other social purpose include any membership organization if a principal purpose of the organization is to conduct entertainment activities for members of the organization or their guests or to provide members or their guests with access to entertainment facilities within the meaning of paragraph (e)(2) of this section. Clubs organized for business, pleasure, recreation, or other social purpose include, but are not limited to, country clubs, golf and athletic clubs, airline clubs, hotel clubs, and clubs operated to provide meals under circumstances generally considered to be conducive to business discussion.

(*b*) *Exceptions.* Unless a principal purpose of the organization is to conduct entertainment activities for members or their guests or to provide members or their guests with access to entertainment facilities, business leagues, trade associations, chambers of commerce, boards of trade, real estate boards, professional organizations (such as bar associations and medical associations), and civic or public service organizations will not be treated as clubs organized for business, pleasure, recreation, or other social purpose.

(3) * * *

(iii) ''Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or before January 1, 1994, with respect to clubs'', see paragraph (e) of this section, and

* * * * *

(e) *Expenditures paid or incurred before January 1, 1979, with respect to entertainment facilities or before January 1, 1994, with respect to clubs*—(1) *In general.* Any expenditure paid or incurred before January 1, 1979, with respect to a facility, or paid or incurred before January 1, 1994, with respect to a club, used in connection with entertainment shall not be allowed as a deduction except to the extent it meets the requirements of paragraph (a)(2)(ii) of this section.

* * * * *

(3) * * *

(ii) *Club dues*—(*a*) *Club dues paid or incurred before January 1, 1994.* Dues or fees paid before January 1, 1994, to any social, athletic, or sporting club or organization are considered expenditures with respect to a facility used in connection with entertainment. The purposes and activities of a club or organization, and not its name, determine its character. Generally, the phrase *social, athletic, or sporting club or organization* has the same meaning for purposes of this section as that phrase had in section 4241 and the regulations thereunder, relating to the excise tax on club dues, prior to the repeal of section 4241 by section 301 of Public Law 89–44. However, for purposes of this section only, clubs operated solely to provide lunches under circumstances of a type generally considered to be conducive to business discussion, within the meaning of paragraph (f)(2)(i) of this section, will not be considered social clubs.

(*b*) *Club dues paid or incurred after December 31, 1993.* See paragraph (a)(2)(iii) of this section with reference to the disallowance of deductions for club dues paid or incurred after December 31, 1993.

* * * * *

§ 1.274–5T [Amended]

Par. 3. In § 1.274–5T, the first two sentences of paragraph (c)(6)(iii) are amended by removing the language ''at any time'' in each sentence and adding the language ''before January 1, 1994,'' in its place.

Margaret M. Richardson,

Commissioner of Internal Revenue.

Approved: June 21, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–17665 Filed 7–18–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8599]

RIN 1545–AN55

Deductions for Transfers of Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning deductions for transfers of property. The regulations amend the special rule that required an employer to deduct and withhold income tax as a prerequisite for claiming a deduction for property transferred to an employee in connection with the performance of services. Under the former regulation, employers that failed to deduct and withhold income tax were denied a deduction even where the employee reported the income and paid the tax. The new rules permit service recipients to claim a deduction for the amount included in the service provider's gross income. The service provider will be deemed to have included an amount in gross income if the service recipient provides a timely Form W–2 or 1099, as appropriate. These regulations apply to all service recipients who transfer property in connection with the performance of services.

DATES: These regulations are effective July 19, 1995.

For dates of applicability, see § 1.83–6(a)(5).

FOR FURTHER INFORMATION CONTACT: Charles T. Deliee, telephone 202–622–6060 (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 1545–1448. The estimated annual burden of reporting will be reflected in the reporting requirements for Form 1099–MISC.

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 December 5, 1994, the IRS published in the **Federal Register** (59 FR 62370) proposed amendments to the income tax regulations (26 CFR part 1) under section 83(h) of the Internal Revenue Code (Code), which permits a deduction for property transferred in connection with the performance of services.

Three written comments were received from the public on the proposed regulations. No public hearing was held. After consideration of the written comments received, the proposed regulations are adopted by this Treasury decision with one technical clarification.

Explanation of Provisions

Under section 83(h) of the Code, in the case of a transfer of property to which section 83(a) applies, the person for whom services were provided may deduct an amount equal to the amount included in the service provider's gross income. In light of the difficulty that a service recipient may have in demonstrating that an amount has

actually been included in the service provider's gross income, the general rule in former § 1.83–6(a)(1) permitted the deduction for the amount ''includible'' in the service provider's gross income. Thus, the deduction was allowed to the service recipient even if the service provider did not properly report the includible amount. Where the service provider was an employee of the service recipient, however, the special rule in § 1.83–6(a)(2) provided that a deduction could be claimed only if the service recipient (employer) deducted and withheld income tax in accordance with section 3402. The special rule was designed to ensure that the service recipient's deduction was in fact offset by a corresponding inclusion in the service provider's gross income. The special rule was limited to employer-employee situations because in other situations there was no underlying withholding requirement upon which the deduction could be conditioned.

Taxpayers expressed concern that it was often difficult to satisfy the prerequisite that employers must deduct and withhold income tax from payments in kind as a condition for claiming a deduction. These regulations address this concern by eliminating this prerequisite, while still ensuring consistent treatment between service recipients and service providers as required by the statute. In addition, because the deduction no longer is conditioned on withholding, there no longer is a need to have different rules for those who receive services from employees and those who receive services from others.

Under these regulations, the former general rule and special rule are replaced by a revised general rule that more closely follows the statutory language of section 83(h). The service recipient is allowed a deduction for the amount ''included'' in the service provider's gross income. For this purpose, the amount included means the amount reported on an original or amended return or included in gross income as a result of an IRS audit of the service provider.

Because of the potential difficulty of demonstrating actual inclusion by the service provider, a special rule provides that, if the service recipient timely complies with applicable Form W–2 or 1099 reporting requirements under section 6041 (or 6041A), as appropriate, with respect to the amount includible in income by the service provider, the service provider is deemed to have included the amount in gross income for this purpose. Thus, the regulations allow the deduction without requiring the service recipient to demonstrate actual inclusion by the service provider. If a transfer meets the requirements for exemption from reporting for payments aggregating less than $600 in any taxable year, or is eligible for any other reporting exemption, no reporting is required in order for the service recipient to rely on the deemed inclusion rule.

In order to allow service recipients to take advantage of the deemed inclusion rule with respect to property transfers to all service providers, these regulations also permit service recipients to use the special rule in the case of transfers to corporate service providers. To that end, service recipients are permitted, solely for purposes of this rule, to treat the Form 1099 reporting requirements as applicable to transfers to corporate service providers in the same manner as those requirements apply to transfers to noncorporate service providers. Thus, if a service recipient who transferred property to a corporate service provider timely reports that income on Form 1099 (to both the service provider and the federal government), the service recipient is entitled to rely on the deemed inclusion rule in claiming a deduction for the amount of that income. If the transfer meets the requirements for exemption from reporting for payments aggregating less than $600 in any taxable year, or is eligible for any other reporting exemption applicable to a service provider that is not a corporation, no reporting is required in order for the service recipient to rely on the deemed inclusion rule.

The deemed inclusion rule may be used only by a service recipient whose compliance with applicable Form W–2 or 1099 reporting requirements is timely. Thus, for example, under the current reporting requirements, if amounts attributable to one or more section 83 transfers of property are includible in an employee's income in year 1 (and are not eligible for any reporting exemption), the employer generally is required to furnish the employee a Form W–2 reflecting that amount by January 31 of year 2 and generally is required to file a copy of the Form W–2 with the federal government by the last day of February of year 2. If the employer reports to the employee and the government in a timely manner, the employer can rely on the deemed inclusion rule to claim a deduction for the amount in year 1. If the employee's Form W–2 is not furnished until after January 31 of year 2 or the government's copy of Form W–2 is not filed until after the last day of February of year 2, the employer generally is required to demonstrate that the employee actually included the amount in income in order to support its deduction of the amount.

Under these regulations, a special rule applies with respect to an amount includible in an employee's or former employee's income by reason of a disqualifying disposition of stock that had been acquired pursuant to a statutory stock option. In the case of such a disposition, and solely for the purpose of determining whether an employer may use the deemed inclusion rule under these regulations, a Form W–2 or W–2c (as appropriate) will be considered timely if it is furnished to the employee or former employee, and filed with the federal government, by the date on which the employer files its tax return (including an amended return) claiming a deduction for that amount.

With respect to disqualifying dispositions, these regulations modify the conditions for an employer's deduction under section 83(h) in a manner that is not inconsistent with the guidance provided by Notice 87–49 (Changes to Incentive Stock Option Requirements by Section 321 of the Tax Reform Act of 1986), 1987–2 C.B. 355. These regulations are not intended to have any effect on the application of Notice 87–49 or the analysis contained therein, and therefore should not be viewed as constituting a reconsideration of Revenue Ruling 71–52, 1971–1 C.B. 278, within the meaning of Notice 87–49.

Three written comments were received from the public on the proposed regulations. One dealt specifically with the withholding requirements as they apply to disqualifying dispositions of stock received under an employee stock purchase plan and, therefore, is beyond the scope of this regulation. The remaining two comments generally applauded the proposed amendments, but they both expressed a concern that, even after elimination of the withholding requirement as a prerequisite for claiming a deduction under section 83(h), there remains a statutory requirement, under subtitle C, to withhold income tax from compensatory transfers of property. Both commentators suggested that regulations be published to exclude transfers of property in payment for services from the withholding requirements.

Treasury and the IRS have carefully considered the comments. However, section 3402 of the Code requires every employer making payment of wages to deduct and withhold income tax from the wages. Section 3401(a) (relating to the definition of wages for income tax

withholding purposes), section 3121(a) (relating to the definition of wages for FICA tax purposes), and section 3306(b) (relating to the definition of wages for FUTA tax purposes) of subtitle C all provide that ''wages'' means all remuneration ''including the cash value of all remuneration (including benefits) paid in any medium other than cash,'' except as specified otherwise in those sections. A transfer of property in connection with the performance of services is not one of the specified exceptions.

Therefore, although the withholding requirement is eliminated as a prerequisite for claiming a deduction, these regulations do not relieve the service recipient from any applicable withholding requirements of subtitle C or from the statutorily prescribed penalties or additions to tax for noncompliance with those requirements. Thus, for example, if an employer transferred to an employee property to which section 83 applies and failed to withhold income tax on the payment, the employer would be liable for the tax under section 3403. However, under section 3402(d), any tax liability assessed against the employer would be offset by any tax paid by the employee. In addition, nothing in these regulations relieves the service recipient from penalties or additions to tax for noncompliance with the requirements of section 6041 or 6041A (relating to information reporting) to the extent they otherwise apply.

These regulations are effective for deductions allowable for taxable years beginning on or after January 1, 1995. However, taxpayers may apply these regulations when claiming a deduction for any year not closed by the statute of limitations. For example, if substantially vested (within the meaning of § 1.83–3(b)) stock was transferred to an employee in 1992 upon the exercise of a nonstatutory stock option, and if the calendar year employer furnished a Form W–2 to the employee by January 31, 1993, reflecting the income generated by the transfer and filed the appropriate Form W–2 with the federal government by February 28, 1993, then the employer could apply these regulations to claim a deduction for 1992 for the amount of the income, even if the employer failed to withhold in accordance with section 3402 and could not demonstrate actual inclusion in income by the employee. If that employer did not claim a deduction for the amount of the income on its 1992 tax return, it could file an amended return for 1992 claiming such a deduction pursuant to these regulations, provided that 1992 is still an open year.

The proposed regulation that was published in the **Federal Register** on November 16, 1983 (48 FR 52079), proposing to amend the special rule in § 1.83–6(a)(2), was withdrawn by the Notice of Proposed Rulemaking published on December 5, 1994 (59 FR 62371).

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 has also 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 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 Charles T. Deliee, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of 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:

Paragraph 1. The authority for part 1 continues to read in part as follows:

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

Par. 2. Section 1.83–6 is amended as follows:

1. Paragraphs (a) (1) and (2) are revised.

2. Paragraph (a)(5) is added.

3. The revisions and addition read as follows:

§ 1.83–6 Deduction by employer.

(a) *Allowance of deduction*—(1) *General Rule*. In the case of a transfer of property in connection with the performance of services, or a compensatory cancellation of a nonlapse restriction described in section 83(d) and § 1.83–5, a deduction is allowable under section 162 or 212 to the person for whom the services were performed. The amount of the deduction is equal to the amount included as compensation in the gross income of the service provider under section 83 (a), (b), or (d)(2), but only to the extent the amount meets the requirements of section 162 or 212 and the regulations thereunder. The deduction is allowed only for the taxable year of that person in which or with which ends the taxable year of the service provider in which the amount is included as compensation. For purposes of this paragraph, any amount excluded from gross income under section 79 or section 101(b) or subchapter N is considered to have been included in gross income.

(2) *Special Rule*. For purposes of paragraph (a)(1) of this section, the service provider is deemed to have included the amount as compensation in gross income if the person for whom the services were performed satisfies in a timely manner all requirements of section 6041 or section 6041A, and the regulations thereunder, with respect to that amount of compensation. For purposes of the preceding sentence, whether a person for whom services were performed satisfies all requirements of section 6041 or section 6041A, and the regulations thereunder, is determined without regard to § 1.6041–3(c) (exception for payments to corporations). In the case of a disqualifying disposition of stock described in section 421(b), an employer that otherwise satisfies all requirements of section 6041 and the regulations thereunder will be considered to have done so timely for purposes of this paragraph (a)(2) if Form W–2 or Form W–2c, as appropriate, is furnished to the employee or former employee, and is filed with the federal government, on or before the date on which the employer files the tax return claiming the deduction relating to the disqualifying disposition.

* * * * *

(5) *Effective date*. Paragraphs (a)(1) and (2) of this section apply to deductions for taxable years beginning on or after January 1, 1995. However, taxpayers may also apply paragraphs (a)(1) and (2) of this section when claiming deductions for taxable years beginning before that date if the claims are not barred by the statute of limitations. Paragraphs (a) (3) and (4) of this section are effective as set forth in § 1.83–8(b).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by adding the entry ''1.83–6 * * * 1545–1448'' in numerical order to the table.

Approved: June 19, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–17494 Filed 7–18–95; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2627

RIN 1212–AA77

Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document makes a clarifying correction to the final rule on disclosure to participants (29 CFR part 2627) that was published in the **Federal Register** of Friday, June 30, 1995 (60 FR 34412). The final regulations in that document implement a new notice requirement under section 4011 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994. The action is needed to clarify the final regulations.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The following correction is made to the final rule that was the subject of FR Doc. No. 95–16196, which was published Friday, June 30, 1995 (60 FR 34412). The final regulations in that document implement section 4011 of ERISA, which requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC is correcting § 2627.3 of the final regulations to make clear that a plan does not have to provide the Participant Notice for a plan year if it meets the DRC Exception Test in § 2627.3(b) for that plan year or for the prior plan year. Accordingly, on page 34414, in the second and third columns, paragraph (a) of § 2627.3 is corrected to read as follows:

§ 2627.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if a variable rate premium is payable for the plan under section 4006(a)(3)(E) of the Act and part 2610 of this chapter for that plan year, unless, for that plan year or for the prior plan year, the plan meets the Deficit Reduction Contribution (''DRC'') Exception Test in paragraph (b) of this section. The DRC Exception Test may be applied using the Small Plan DRC Exception Test rules in § 2627.4(b), where applicable.

* * * * *

Issued in Washington, DC, this 12th day of July 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–17713 Filed 7–18–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Abandoned Mine Land Reclamation (AMLR) Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Montana AMLR plan (hereinafter referred to as the ''Montana plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed the addition of new provisions to its AMLR plan that concern the reclamation of interim program and bankrupt surety bond forfeiture coal sites, future set-aside funds and an acid mine drainage program, and water treatment supply replacement project requirements. Montana also included in this amendment updated policies and procedures concerning purchasing, equal opportunity in employment, Americans With Disabilities Act, compliance with the National Oil and Hazardous Substances Contingency Plan, and coordination and consultation with other State and Federal agencies. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508), and to improve operational efficiency.

EFFECTIVE DATE: July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Casper Field Office, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Generally, lands and waters eligible for reclamation under Title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws. Lands and waters abandoned or inadequately reclaimed after August 3, 1977, are also eligible for reclamation under provisions at sections 402(g)(4) and 404 of SMCRA.

Title IV provides for State submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations at 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State program. Approval granted the State exclusive authority to administer its plan.

Upon approval of a State plan by the Secretary, the State may submit to OSM, on an annual basis, an application for funds to be expended by that State on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR part 886.