

§ 1145.11 Certain play yards (playpens) with mesh sides; risk of asphyxia from airway blockage or chest compression (issued July 27, 1983, 48 FR 34023).

§ 1145.12 Certain portable cribs with mesh sides; risk of asphyxia from airway blockage or chest compression (issued July 27, 1983, 48 FR 34023).

§ 1145.13 Certain expandable children's enclosures; risk of strangulation (issued March 5, 1984).

§ 1145.14 Baby cribs with certain hardware failures or omissions; risks of death or injury (issued April 10, 1984, 49 FR 14101).

§ 1145.15 Baby bassinets having legs that collapse; risks of death or injury (issued July 27, 1984, 49 FR 30171).

Thereafter, the Commission obtained voluntary corrective action plans from manufacturers of the products which were the subjects of the transfer rules.

#### F. Amendment of the FHSA

On October 17, 1984, the Toy Safety Act of 1984 (Pub. L. 98-491, 98 Stat. 2269) became law. This legislation is codified as section 15(c) of the FHSA (15 U.S.C. 1274(c)). It authorizes the Commission to order corrective action with regard to any toy or children's article which is not in violation of a banning rule but which nevertheless presents a "substantial risk of injury to children." With the addition of section 15(c) to the FHSA, the provisions of the FHSA and the CPSA authorizing the Commission to order corrective action are now substantially similar.

#### G. Revocation of Transfer Rules

Manufacturers of the products subject to the transfer rules described above have taken all actions required by the corrective action plans accepted by the Commission. If, in the future, the Commission learns of similar risks of injury presented by such toys and children's articles, section 15(c) of the FHSA authorizes the Commission to issue an order for corrective action without first issuing a banning rule. Consequently, the Commission is revoking the transfer regulations codified at 16 CFR 1145.9 through 1145.14 because they are no longer needed.

Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to publish a notice of proposed rulemaking before issuing or revoking a regulation. However, the APA provides at 5 U.S.C. 553(b)(A) that requirements for a notice of proposed rulemaking are not applicable to rules of agency procedure or practice. Because the rules being revoked are procedural

rules, notice of proposed rulemaking is not required.

The APA also requires at 5 U.S.C. 553(d) that a substantive rule must be published at least 30 days before its effective date. However, the rules being revoked are procedural rules which do not have any substantive effect. Because the rules at issue meet these criteria, this revocation shall become effective immediately.

#### H. Conclusion

Therefore, under the authority of section 553 of the Administrative Procedure Act and section 30(d) of the Consumer Product Safety Act, the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter B, Part 1145 to read as follows:

### PART 1145—AMENDED

1. The authority for Part 1145 continues to read as follows:

Authority: Sec. 30(d), Pub. L. 92-573, 86 Stat. 1231 as amended 90 Stat. 510; 15 U.S.C. 2079(d).

#### §§ 1145.9 through 1145.15 [Removed and reserved]

2. Sections 1145.9, 1145.10, 1145.11, 1145.12, 1145.13, 1145.14, and 1145.15 are removed and reserved.

Dated: November 28, 1995.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8618]

RIN 1545-AM15

#### Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations (TD 8618) which were published in the Federal Register, Thursday, September 7, 1995 (60 FR 46500), governing the definition of a controlled foreign corporation and the definitions of foreign base company income and

foreign personal holding company income of a controlled foreign corporation.

**EFFECTIVE DATE:** September 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Valerie Mark, (202) 622-3840 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are the subject of these corrections amend the Income Tax Regulations (26 CFR Part 1) under sections 954(b), 954(c) and 957(a) of the Internal Revenue Code.

##### Need for Correction

As published, the final regulations (TD 8618) contain errors which may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the final regulations (TD 8618), which was the subject of FR Doc. 95-21838, is corrected as follows:

1. On page 46501, column 3, in the preamble under the paragraph heading "*Section 1.954-1: Foreign Base Company Income*", paragraph 1 in the column, the sixth line from the bottom of the paragraph, the language "904(f)(5). Commentators stated that" is corrected to read "904(f)(5). Commenters stated that".

2. On page 46503, column 2, in the preamble under the paragraph heading "*Section 1.954-2: Foreign Personal Holding Company Income*", the first full paragraph in the column, line 6, the language "transactions entered on or after March 7," is corrected to read "transactions entered into on or after March 7."

3. On page 46505, column 2, in the preamble under the paragraph heading "*Section 1.954-2: Foreign Personal Holding Company Income*", the second full paragraph in the column, line 3, the language "1.952-2(e)(3)(iv) excludes from foreign" is corrected to read "1.954-2(e)(3)(iv) excludes from foreign".

#### § 1.954-0 [Corrected]

4. On page 46509, middle of column 1, § 1.954-0 (b), the entry for § 1.954-2(b)(3), "(3) Treatment of tax-exempt interest. [RESERVED.]" is corrected to read "(3) Treatment of tax-exempt interest. [RESERVED]".

#### § 1.954-1 [Corrected]

5. On page 46513, column 2, § 1.954-1(d)(7)(i), paragraph (ii) of Example 1, line 7, the language "subpart F under the rules of this paragraph" is corrected

to read "subpart F income under the rules of this paragraph".

6. On page 46513, column 2, § 1.954-1(d)(7)(i), paragraph (ii) of Example 1, line 18, the language "year is 34 percent. Accordingly, the net item" is corrected to read "year is 35 percent. Accordingly, the net item".

7. On page 46513, column 2, § 1.954-1(d)(7)(i), paragraph (ii) of Example 1, the third and fourth lines from the bottom of the paragraph, the language "that is greater than 30.6 percent (90 percent of 34 percent). However, for purposes of" is corrected to read "that is greater than 31.5 percent (90 percent of 35 percent). However, for purposes of".

8. On page 46513, column 2, § 1.954-1(d)(7)(i), paragraph (ii) of Example 2, line 2, the language "greater than 30.6 percent. The net item of" is corrected to read "greater than 31.5 percent. The net item of".

9–11. On page 46513, column 3, § 1.954-1(d)(7)(i), paragraph (ii) of Example 3, line 3, the language "greater than 30.6 percent, but Item 2 is not." is corrected to read "greater than 31.5 percent, but Item 2 is not.".

12–13. On page 46513, column 3, § 1.954-1(d)(7)(i), Example 4, line 7, the language "effective rate greater than 30.6 percent. The" is corrected to read "effective rate greater than 31.5 percent. The".

14. On page 46514, column 2, § 1.954-1(d)(7)(ii), paragraph (iv) of Example 1, the last two lines of the paragraph, the language "States rate of taxation under section 11 is 34 percent." is corrected to read "States rate of taxation under section 11 is 35 percent.".

15. On page 46514, column 3, § 1.954-1(d)(7)(ii), paragraph (v) of Example 1, the fourteenth line from the bottom of the column, the language "tax rate ..... 30.6%" is corrected to read "tax rate ..... 31.5%".

16. On page 46515, column 1, § 1.954-1(d)(7)(ii), paragraph (v) of Example 1, in item "(29)", the last line, the language

"line (27) over line (26) ..... 100" is corrected to read

"line (27) over line (26)) ..... 100".

17. On page 46515, column 2, § 1.954-1(d)(7)(ii), paragraph (iv) of Example 2, the last line, the language "of taxation under section 11 is 34 percent" is corrected to read "of taxation under section 11 is 35 percent".

18. On page 46515, column 3, § 1.954-1(d)(7)(ii), paragraph (v) of Example 2, in item "(15)", the last line, the language

"tax rate ..... 30.6%" is corrected to read

"tax rate ..... 31.5%".

19. On page 46517, column 1, § 1.954-1(f)(2)(iv), line 4, the language "the principles of section 958(a) shall be" is corrected to read "the principles of section 958 shall be".

#### **§ 1.954-2 [Corrected]**

20. On page 46521, column 3, § 1.954-2(b)(4)(x), is corrected to read as follows:

#### **§ 1.954-2 Foreign personal holding company income.**

\* \* \* \* \*

(b) \* \* \*  
(4) \* \* \*

##### *(x) Treatment of certain stock*

*interests.* Stock in a controlled foreign corporation (lower-tier corporation) that is incorporated in the same country as the payor and that is more than 50-percent owned, directly or indirectly, by the payor within the meaning of section 958(a) shall be considered located in the payor's country of incorporation and, solely for purposes of section 954(c)(3), used in a trade or business of the payor in proportion to the value of the assets of the lower-tier corporation that are used in a trade or business in the country of incorporation. The location of assets used in a trade or business of the lower-tier corporation shall be determined under the rules of this paragraph (b)(4).

\* \* \* \* \*

21. On page 46523, column 2, § 1.954-2(d)(1)(i), line 6, the language "creation, or production of, or in the" is corrected to read "creation or production of, or in the".

22. On page 46523, column 3, § 1.954-2(d)(3), Example 1, line 4, the language "country X. At the research facility employees" is corrected to read "country X. At the research facility, employees".

23. On page 46523, column 3, § 1.954-2(d)(3), Example 1, line 18, the language "creation, or production of, or in the" is corrected to read "creation or production of, or in the".

24. On page 46524, column 3, § 1.954-2(e)(2)(ii) introductory text, line 2, the language "the sale, exchange, or retirement of a" is corrected to read "the sale, exchange or retirement of a".

25. On page 46525, column 2, § 1.954-2(f)(2)(iii)(A), line 6, the language "merchant, or handler of commodities if" is corrected to read "merchant or handler of commodities if".

26. On page 46525, column 2, § 1.954-2(f)(2)(iii)(B) introductory text, line 5, the language "producer,

processor, merchant, or" is corrected to read "producer, processor, merchant or".

27. On page 46525, column 3, § 1.954-2(f)(2)(iii)(C), line 4, the language "processor, merchant, or handler of" is corrected to read "processor, merchant or handler of".

28. On page 46525, column 3, § 1.954-2(f)(2)(iii)(E), line 4, the language "producer, processor, merchant, or" is corrected to read "producer, processor, merchant or".

29. On page 46526, column 1, § 1.954-2(g)(2)(ii)(A), line 1, the language "General Rule. Foreign currency gain or" is corrected to read "General rule. Foreign currency gain or".

30. On page 46527, column 2, § 1.954-2(g)(3)(iv), paragraph (ii) of the Example, third line from the bottom of the paragraph, the language "transactions generate a net foreign currency" is corrected to read "transactions generate a net foreign base company sales".

31. On page 46528, column 1, § 1.954-2(h)(2)(i)(A), line 3, the language "payments, cash flows, or return" is corrected to read "payments, cash flows or return".

32. On page 46528, column 1, § 1.954-2(h)(2)(i)(G), lines 2 and 3, the language "provide financing, whether or not such financing actually is provided;" is corrected to read "provide financing, if any portion of such financing is actually provided;".

33. On page 46528, column 3, § 1.954-2(h)(4)(iv), Example 1, line 10, the language "receivable is acquired by FS. FS purchases" is corrected to read "receivables are acquired by FS. FS purchases".

34. On page 46528, column 3, § 1.954-2(h)(4)(iv), Example 1, line 13, the language "obligor under the receivable on Day 40." is corrected to read "obligor under the receivables on Day 40.".

35. On page 46528, column 3, § 1.954-2(h)(4)(iv), Example 2, lines 4 through 9, the language "under the factored receivable on Day 40, FS sells the receivable to controlled foreign corporation Y on Day 15 for \$97. Both the income derived by FS on the factored receivable and the income derived by Y (other than stated interest) on the receivable" is corrected to read "under the factored receivables on Day 40, FS sells the receivables to controlled foreign corporation Y on Day 15 for \$97. Both the income derived by FS on the factored receivables and the income derived by Y (other than stated interest) on the receivables".

36. On page 46529, column 1, § 1.954–2(h)(4)(iv), Example 5, line 3, the language “receivable to Y for \$99 on day 45, at which” is corrected to read “receivables to Y for \$99 on Day 45, at which”.

37. On page 46529, column 1, § 1.954–2(h)(4)(iv), Example 5, lines 7 through 10, the language “receivable at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by Y from the factored receivable is excluded from factoring income” is corrected to read “receivables at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by Y from the factored receivables is excluded from factoring income”.

38. On page 46529, column 1, § 1.954–2(h)(4)(iv), Example 6, line 4, the language “controlled foreign corporation. On Day 1” is corrected to read “controlled foreign corporation. On Day 1.”.

39. On page 46529, column 2, § 1.954–2(h)(6), Example 1, is corrected to read as follows:

#### **§ 1.954–2 Foreign personal holding company income.**

\* \* \* \*

(h) \* \* \*

(6) \* \* \*

Example 1. *CFC*, a controlled foreign corporation, promises that Corporation A may borrow up to \$500 in principal for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, Corporation A pays *CFC* a commitment fee of \$2. Pursuant to this agreement, *CFC* lends \$80 to Corporation A. As a result, the entire \$2 fee is included in the computation of *CFC*'s foreign personal holding company income under paragraph (h)(2)(i)(G) of this section.

\* \* \* \*

40. On page 46529, column 2, § 1.954–2(h)(6), paragraph (i) of Example 3, lines 7 and 8, the language “a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one” is corrected to read “a floating rate of interest set at LIBOR plus one”.

41. On page 46529, column 3, § 1.954–2(h)(6), paragraph (i) of Example 4, line 1 in the column, the language “contemporaneously, enters into a 3 month” is corrected to read “contemporaneously, enter into a 3-month”.

#### **§ 1.957–1 [Corrected]**

42. On page 46529, column 3, § 1.957–1(a)(2), the third line from the bottom of the paragraph, the language “association, joint stock company, or” is

corrected to read “association, joint stock company or”.

Cynthia E. Grigsby,  
*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

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#### **26 CFR Part 1**

[TD 8629]

RIN 1545–AL57

#### **Certain Publicly Traded Partnerships Treated as Corporations**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations relating to the classification of certain publicly traded partnerships as corporations. These regulations provide guidance needed by taxpayers to comply with changes to the law made by the Omnibus Budget Reconciliation Act of 1987. The regulations affect the classification of certain partnerships for federal tax purposes.

**DATES:** These regulations are effective December 4, 1995.

For dates of applicability of these regulations, see § 1.7704–1(l).

**FOR FURTHER INFORMATION CONTACT:** Christopher T. Kelley, (202) 622–3080 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Introduction**

This document adds § 1.7704–1 to the Income Tax Regulations (26 CFR part 1) relating to the definition of a publicly traded partnership under section 7704(b) of the Internal Revenue Code (Code).

##### **Background**

Section 7704 was added to the Code by section 10211(a) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), as amended by sections 2004(f)(1)–(5) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647). Section 7704(a) provides that a publicly traded partnership is treated as a corporation for federal tax purposes unless the partnership meets the 90 percent qualifying income test of section 7704(c) or qualifies as an existing partnership. The term *existing partnership* is defined in § 1.7704–2. Under section 7704(b), a partnership is a publicly traded partnership if interests in the partnership are traded on an established securities market or are readily tradable

on a secondary market or the substantial equivalent thereof. Section 7704 applies to all domestic and foreign entities treated as partnerships under section 7701, including limited liability companies and other entities treated as partnerships for federal tax purposes.

Notice 88–75 (1988–2 C.B. 386) was issued to provide interim guidance on the definition of a publicly traded partnership under section 7704(b).

Notice 88–75 provides that interests in a partnership are not treated as readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b)(2) if the interests are: (1) Issued in certain private placements; (2) transferred pursuant to transfers not involving trading; (3) traded in amounts that meet the requirements of a 5-percent or 2-percent safe harbor; (4) transferred through a matching service that meets certain requirements; or (5) transferred pursuant to a qualifying redemption or repurchase agreement. Notice 88–75 does not address when partnership interests are treated as traded on an established securities market for purposes of section 7704(b)(1).

On May 2, 1995, the IRS published in the Federal Register a notice of proposed rulemaking (60 FR 21475) to provide guidance regarding section 7704(b). A number of public comments were received concerning the proposed regulations, and a public hearing was held on July 31, 1995. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

#### **Summary of Significant Comments and Revisions**

The significant comments on the proposed regulations and the revisions made in the final regulations are discussed below.

#### **Public Trading**

Several commentators requested clarification of the definition of an established securities market, a secondary market, and the substantial equivalent of a secondary market. The definitions in the proposed regulations, however, are drawn directly from the legislative history to section 7704(b) and incorporate the most important elements of public trading within the meaning of section 7704(b). As a result, the final regulations generally adopt the definitions in the proposed regulations.

The final regulations contain two changes to the definition of a secondary market and the substantial equivalent thereof. The final regulations clarify that the determination of whether interests in a partnership are readily tradable on