contract that is specified in the proposed settlement.

Recently, the Commission has been shortening the time period in which divestiture is to take place and has more frequently included specific approved acquirers and reference specific divestiture agreements in proposed orders when the Commission accepts proposed orders for public comment. This trend has increased the likelihood that the divestiture transaction will occur before there is a final order requiring divestiture. In these circumstances, Rule 802.70 as written, because it applies only to final orders, does not provide an exemption. Nevertheless, the same reasons to exclude from the HSR filing requirements divestitures after the order is entered also apply in cases where the proposed order identifies the acquirer and the divestiture contract. The agencies have already had an opportunity comparable to that which HSR provides to weigh the competitive impact of proposed transaction and to approve or disapprove the transaction. There is therefore no need for a separate HSR filing.

The Federal Trade Commission believes that an acquisition of assets or voting securities pursuant to the terms of a proposed order of divestiture is unlikely to violate the antitrust laws and that exempting such acquisitions is necessary and appropriate to carry out the purposes of the act. Accordingly, the Commission has amended § 802.70 of its premerger notification rules to exempt such acquisitions from premerger reporting requirements.

The following section outlines briefly the rationale for this rulemaking. Subsequent sections discuss certain key issues concerning the Commission's authority to promulgate § 802.70, and the nature of the new rule.

### Statement of the Underlying Problem

The purpose of section 7A of the Clayton Act is clear: to give the antitrust agencies an opportunity to determine whether a proposed acquisition might violate the antitrust laws and an opportunity to challenge any such transaction prior to consummation. At the same time, the program is not without cost, including the cost of filling out the form, filing fees, delaying transactions and otherwise. For transactions that do not rise significant issues under the antitrust laws these costs can be particularly burdensome. The Commission has continually reviewed the premerger notification program in an effort to increase its efficiency and decrease the burden on filing parties. This rulemaking proceeding is part of this effort.

### Analysis of Proposed Revised Rule 802.70

Revised rule 802.70 exempts completely from HSR premerger notification requirements acquisitions pursuant to a divestiture order once the order is accepted by the Commission for public comment or is filed with the Federal court for public comment. It does so because the Commission believes that such transactions, having received a full review and been accepted by the Commission or the Antitrust Division, are not likely to violate the antitrust laws and because exempting such acquisitions is necessary and appropriate to carry out the purposes of the act.

In deciding to revise rule 802.70, the Commission relied upon its own extensive merger enforcement experience, as well as that of the Antitrust Division of the Department of Justice.

Congress expressly has authorized the Commission, with the concurrence of the Assistant Attorney General, to ''exempt from requirements of [the act], classes of * * * transactions which are not likely to violate the antitrust laws.'' Section 7A(d)(2)(B) of the Act. The finding required by the statute can be demonstrated in different ways. The Commission can exempt a class of transactions because that class of transactions is inherently unlikely to be anticompetitive. Acquisitions pursuant to divestiture orders are inherently unlikely to be anticompetitive. Such transactions are already subject to the approval of the agencies and such approval would not be granted if the transaction would be anticompetitive. This is true whether or not the divestiture order is final. Accordingly, there is no need for a separate HSR filing.

### List of Subjects in 16 CFR Part 802

Antitrust.

### Final Rule

The Commission amends Title 16b Chapter I, Subpart H, The Code of Federal Regulations as follows:

## PART 802—EXEMPTION RULES

1. *Authority.* The authority citation for Part 802 continues to read as follows:

**Authority:** Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94–435, 90 Stat. 1390.

2. Section 802.70 is revised to read as follows:

**§ 802.70 Acquisitions subject to order.**

An acquisition shall be exempt from the requirements of the act if the voting securities or assets are to be acquired from an entity pursuant to and in accordance with:

(a) An order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice;

(b) An Agreement Containing Consent Order that has been accepted by the Commission for public comment, pursuant to the Commission's Rules of Practice; or

(c) A proposal for a consent judgment that has been submitted to a Federal court by the Federal Trade Commission or the Department of Justice and that is subject to public comment.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 98–16954 Filed 6–24–98; 8:45 am]

BILLING CODE 6750–01–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[TD 8773]**

**RIN 1545–AV62**

## EIC Eligibility Requirements

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The temporary regulations apply to taxpayers claiming the EIC for taxable years beginning after December 31, 1997, where the taxpayer's EIC claim was denied for a taxable year beginning after December 31, 1996. The text of these temporary regulations also serves as the text of proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective date:* June 25, 1998.

*Applicability dates:* For dates of applicability, see § 1.32–3T(f) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Karin Loverud at 202–622–6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1575. Responses to this collection of information are mandatory. 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 assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may 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 the Income Tax Regulations (26 CFR part 1) providing guidance relating to the requirement that taxpayers who are denied the EIC for a taxable year demonstrate their eligibility to claim the EIC in a subsequent taxable year. This requirement is described in section 32(k)(2), which was added by section 1085(a)(1) of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788).

Section 32(k)(2) pertains to taxpayers who are denied the EIC as a result of the deficiency procedures under subchapter B of chapter 63 (the deficiency procedures). A taxpayer who has been denied the EIC for any taxable year as a result of the deficiency procedures is ineligible to claim the EIC for a subsequent taxable year unless the taxpayer provides information required by the Secretary demonstrating eligibility for the EIC. If the taxpayer demonstrates eligibility for the EIC, the taxpayer is not required to provide this information in the future unless the IRS again denies the EIC as a result of the deficiency procedures.

If the taxpayer fails to provide the required information or the information provided does not demonstrate eligibility for the EIC, the requirements of section 32(k)(2) are not satisfied. In such circumstances, the IRS can treat the failure to meet these requirements as a mathematical or clerical error.

In the case of deficiencies attributable to certain mathematical and clerical errors, enumerated in section 6213(g), the IRS is authorized to make a summary assessment, without following the normal deficiency procedures. In the case of EIC claims, mathematical and clerical errors can include both errors that apply generally to all returns and certain errors specific to the EIC. For example, mathematical and clerical errors include situations in which (1) a taxpayer fails to provide a correct taxpayer identification number required under section 32, or (2) a taxpayer who claims the EIC with respect to net earnings from self-employment fails to pay the proper amount of self-employment tax on the net earnings. As noted above, the IRS is now authorized to treat failure to meet the requirements of section 32(k)(2) as a mathematical or clerical error.

Ineligibility for the EIC under these new rules is subject to review by the courts.

The new provision applies to taxpayers who are denied the EIC on their return for any taxable year beginning after 1996.

## Explanation of Provisions

A taxpayer who has been denied the EIC, in whole or in part, as a result of deficiency procedures is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer provides evidence of eligibility for the EIC. Deficiency procedures include administrative procedures (other than procedures related to mathematical or clerical errors) that result in an assessment of a deficiency in tax, whether or not a notice of deficiency is issued. To demonstrate current eligibility, the regulations require the taxpayer to complete Form 8862, *Information To Claim Earned Income Credit After Disallowance.* Form 8862 contains a series of questions designed to assist the IRS in determining whether the taxpayer is eligible to claim the EIC under section 32 for the subsequent taxable year. A taxpayer fails to demonstrate eligibility if, for example, the form is incomplete or any item of information on the form is incorrect or inconsistent with any item on the return. If the taxpayer properly demonstrates eligibility for the EIC, the taxpayer is not required to submit Form 8862 in the future unless the IRS again denies the EIC as a result of the deficiency procedures.

The regulations require the taxpayer to attach Form 8862 to the first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures. The EIC is denied as a result of the deficiency procedures when an assessment of a deficiency is made (other than as a mathematical or clerical error under section 6213(b)(1)).

The Treasury Department and the IRS anticipate that the Commissioner of Internal Revenue may require taxpayers to provide documentary evidence in addition to Form 8862. Whether or not the Commissioner requires taxpayers to provide documentary evidence in addition to Form 8862, the Commissioner may choose to examine any return claiming the EIC for which Form 8862 is required.

The regulations provide that if the taxpayer fails to properly complete Form 8862 or does not demonstrate eligibility for the EIC, the provisions of section 32(k)(2) are not satisfied. In such circumstances, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)] (relating to the omission of information required by section 32(k)(2)). If a taxpayer's claim for the EIC is denied under section 6213(g)(2)(J) [(K)], the taxpayer must attach Form 8862 to the next return for which the EIC is claimed.

The regulations provide that if two individuals marry after one has been denied the EIC as a result of the deficiency procedures, the eligibility requirements apply when they file a joint return and claim the EIC. For example, two unmarried taxpayers have qualifying children and claim the EIC. The taxpayers subsequently marry. For a taxable year preceding the marriage, one of the taxpayers was denied the EIC under the deficiency procedures and has not established eligibility for a subsequent year. In this situation, if they claim the EIC for the taxable year in which they marry, the demonstration of eligibility rules will apply.

## Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 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) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the underlying statute applies only to individuals. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f), these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), 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 part 1 is 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 1.32–3T is added to read as follows:

**§ 1.32–3T Eligibility requirements (temporary).**

(a) *In general.* A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.

(b) *Denial of the EIC as a result of the deficiency procedures.* For purposes of this section, denial of the EIC as a result of the deficiency procedures occurs when a tax on account of the EIC is assessed as a deficiency (other than as a mathematical or clerical error under section 6213(b)(1)).

(c) *Demonstration of eligibility.* In the case of a taxpayer to whom paragraph (a) of this section applies, and except as otherwise provided by the Commissioner, no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, *Information To Claim Earned Income Credit After Disallowance,* demonstrating eligibility for the EIC, and otherwise is eligible for the EIC. If any item of information on Form 8862 is incorrect or inconsistent with any item on the return, the taxpayer will be treated as not demonstrating eligibility for the EIC. The taxpayer must attach Form 8862 to the taxpayer's first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures.

(d) *Failure to demonstrate eligibility.* If a taxpayer to whom paragraph (a) of this section applies fails to satisfy the requirements of paragraph (c) of this section with respect to a particular taxable year, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)].

(e) *Special rule where one spouse denied EIC.* The eligibility requirements set forth in this section apply to taxpayers filing a joint return where one spouse was denied the EIC for a taxable year prior to marriage and has not established eligibility as either an unmarried or married taxpayer for a subsequent taxable year.

(f) *Effective date.* This section applies to returns claiming the EIC for taxable years beginning after December 31, 1997, where the EIC was denied for a taxable year beginning after December 31, 1996.

## 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.

**Par. 4.** In § 602.101, paragraph (c) is amended by adding an entry to the table 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. |
|---|---|
| * * * * * | |
| 1.32–3T | 1545–1575 |
| * * * * * | |

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: May 18, 1998.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 98–16840 Filed 6–24–98; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AC45**

## Redesignation of 30 CFR Part 250—Oil And Gas And Sulphur Operations In The Outer Continental Shelf; Correction

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule; Corrections.

**SUMMARY:** MMS published in the **Federal Register** of May 29, 1998 (63 FR 29478) a final rule commonly known as the ''Redesignation'' rule which assigns new section numbers to each section in part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf). The purpose was so that MMS can logically format the subparts in the future without further renumbering. The MMS needs to make several minor corrections to the published document.

**EFFECTIVE DATE:** The rule is effective on June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kumkum Ray, Engineering and Operations Division at (703) 787–1600.

**SUPPLEMENTARY INFORMATION:** The final regulations contain several errors in the redesignation table showing the redesignated section containing references to other regulation citations. These may prove to be misleading and are in need of correction. Only the lines being corrected are included in the following.

### Correction of Publication

Accordingly, the publication on May 29, 1998 of the final regulations which were the subject of FR Doc. 98–13249, is corrected as follows:

1. On pages 29486 and 29487, in the table of redesignation, the entries in the