

(2) Single purpose banks established by and for the use of a State DOT with Federal-aid participation; or multipurpose publicly owned banks, established with public, non-title 23 Federal highway funds, in which credits may be purchased by highway agencies using title 23 highway funds on a per-credit basis.

(c) Contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands or natural habitats. Federal-aid funds may participate in the development of statewide and regional wetlands conservation plans, including any efforts and plans authorized pursuant to the Water Resources Development Act of 1990 (Pub. L. 101-640, 104 Stat. 4604). Contributions to these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

(d) Mitigation or restoration of historic impacts to wetlands and natural habitats caused by past highway projects funded pursuant to title 23, U.S. Code, even if there is no current federally funded highway project in the immediate vicinity. These impacts must be related to transportation projects funded under the authority of title 23, U.S. Code.

#### § 777.11 Other considerations.

(a) The development of measures proposed to mitigate impacts to wetlands or natural habitats shall include consultation with appropriate State and Federal agencies.

(b) Federal-aid funds shall not participate in the replacement of wetlands or natural habitats absent sufficient assurances, such as, but not limited to, deed restrictions, fee ownership, permanent easement, or performance bond, that the area will be maintained as a wetland or natural habitat.

(c) The acquisition of proprietary interests in replacement wetlands or natural habitats as a mitigation measure may be in fee simple, by easement, or by other appropriate legally recognized instrument, such as a banking instrument legally approved by the appropriate regulatory agency. The acquisition of mitigation credits in wetland or natural habitat mitigation banks shall be accomplished through a legally recognized instrument, such as permanent easement, deed restriction, or legally approved mitigation banking instrument, which provides for the protection and permanent continuation of the wetland or natural habitat nature of the mitigation.

(d) A State DOT may acquire privately owned lands in cooperation with another public agency or third party. Such an arrangement may accomplish greater benefits than would otherwise be accomplished by the individual agency acting alone.

(e) A State DOT may transfer the title to, or enter into an agreement with, an appropriate public natural resource management agency to manage lands acquired outside the right-of-way without requiring a credit to Federal funds. Any such transfer of title or agreement shall require the continued use of the lands for the purpose for which they were acquired. In the event the purpose is no longer served, the lands and interests therein shall immediately revert to the State DOT for proper disposition.

(f) The reasonable costs of acquiring lands or interests therein to provide replacement lands with equivalent wetlands or natural habitat area or functional capacity associated with these areas are eligible for Federal participation.

(g) The objective in mitigating impacts to wetlands in the Federal-aid highway program is to implement the policy of a net gain of wetlands on a program wide basis.

(h) Certain activities to ensure the viability of compensatory mitigation wetlands or natural habitats during the period of establishment are eligible for Federal-aid participation. These include, but are not limited to, such activities as repair or adjustment of water control structures, pest control, irrigation, fencing modifications, replacement of plantings, and mitigation site monitoring. The establishment period should be specifically determined by the mitigation agreement among the mitigation planners prior to beginning any compensatory mitigation activities.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8915]

RIN 1545-AX71

#### Tiered Structures—Electing Small Business Trusts

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations amending the temporary regulations under section 444 of the Internal Revenue Code (Code) relating to the election of a taxable year other than the required taxable year. The temporary regulations provide that solely with respect to an S corporation shareholder, an electing small business trust (ESBT) and a trust that is described in section 401(a) or section 501(c)(3) and is exempt from taxation under section 501(a) is not a deferral entity for purposes of § 1.444-2T. The temporary regulations affect S corporations, ESBTs that own S corporation stock, and trusts that are described in section 401(a) or section 501(c)(3) and exempt from taxation under section 501(a) that own S corporation stock. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective December 29, 2000.

*Applicability Dates:* For dates of applicability, see § 1.444-4T of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Bradford Poston and James A. Quinn (202) 622-3060 (not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election of a taxable year other than the required taxable year under section 444. Section 444(d)(3) and § 1.444-2T generally prohibit an S corporation that is a member of a tiered structure from making an election under section 444 for taxable years beginning after December 31, 1986. An S corporation is considered to be a member of a tiered structure if the S corporation owns any portion of a deferral entity, or a deferral entity owns any portion of an S corporation. Section 1.444-2T(b)(2) defines deferral entity to include any entity that is a trust with the exception of certain grantor trusts (including qualified subchapter S trusts within the meaning of section 1361(d)(1)(A)).

Section 1302 of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755) (August 20, 1996), modified sections 641 and 1361 of the Internal Revenue Code (Code) to permit an electing small business trust (ESBT) to be an S corporation shareholder and also modified section 1361 to allow an organization (including a trust) that is described in section 401(a) or section 501(c)(3) and that is

exempt from taxation under section 501(a) to be a shareholder of an S corporation. The temporary regulations under section 444 are also being issued as proposed regulations published elsewhere in this issue of the **Federal Register**.

#### Explanation of Provisions

The temporary regulations modify the temporary regulations under section 444 to provide that an ESBT and a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) is not a deferral entity for purposes of § 1.444-2T. Therefore, an S corporation with a section 444 election may have an ESBT or a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) as a shareholder. An ESBT is not a deferral entity within the meaning of § 1.444-2T because under section 641(c) the portion of the ESBT consisting of stock in one or more S corporations is taxed to the deemed owner under subpart E, part I, subchapter J of the Code or is subject to taxation at the trust level without a deduction for amounts distributed or required to be distributed from that portion of the trust. A trust described in section 401(a) (other than an employee stock ownership plan described in section 4975(e)(7)), or a trust described in section 501(c)(3) that is exempt from taxation under section 501(a) is not a deferral entity within the meaning of § 1.444-2T because with respect to such trust all items of income, loss, or deduction taken into account under section 1366(a) and any gain or loss on the disposition of the stock in the S corporation is treated as unrelated business taxable income of such trust under section 512(e)(1) and is subject to taxation under section 511. A trust described in section 401(a) that is an employee stock ownership plan described in section 4975(e)(7) is not a deferral entity within the meaning of § 1.444-2T because such trust does not defer taxation but rather is exempt from taxation under section 501(a) and is not treated as having unrelated business taxable income pursuant to section 512(e)(3).

The temporary regulations are effective as of December 29, 2000. However taxpayers may voluntarily apply these temporary regulations to taxable years of S corporations beginning after December 31, 1996, for S corporations that have ESBTs as shareholders, and for taxable years beginning after December 31, 1997, for S corporations that have trusts described in section 401(a) or section

501(c)(3) that are exempt from taxation under section 501(a) as shareholders.

#### Special Analyses

It has been determined that this Treasury decision is 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, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Small Business Administration for comment on the regulation's impact on small business.

#### Drafting Information

The principal authors of these regulations are Bradford Poston and James A. Quinn of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, 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 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.444-4T is also issued under 26 U.S.C. 444(g). \* \* \*

**Par. 2.** Section 1.444-4T is added under the undesignated centerheading "Accounting Periods" to read as follows:

#### § 1.444-4T Tiered structure (temporary).

(a) *Electing small business trusts.* For purposes of § 1.444-2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is treated as an electing small business trust under section 1361(e). An S corporation with an electing small business trust as a shareholder may make an election under section 444. This paragraph (a) is applicable beginning December 29, 2000, however taxpayers may voluntarily apply it to taxable years of

S corporations beginning after December 31, 1996.

(b) *Certain tax-exempt trusts.* For purposes of § 1.444-2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a). An S corporation with a trust that is described in section 401(a) or section 501(c)(3) that is exempt from taxation under section 501(a) as a shareholder may make an election under section 444. This paragraph (b) is applicable beginning December 29, 2000, however taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1997.

Approved: December 13, 2000.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-301093; FRL-6760-9]

RIN 2070-AB78

### Fludioxonil; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fludioxonil 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile in or on grapes, strawberries, dry bulb onions, and green onions. Novartis Crop Protection, Inc. and the Inter-Regional Project Number (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective December 29, 2000. Objections and requests for hearings, identified by docket control number OPP-301093, must be received by EPA on or before February 27, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301093 in