

numerical order to read in part as follows:

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

Section 1.338(h)(10)–1T also issued under 26 U.S.C. 337(d), 338 and 1502. * * *

■ 2. Section 1.338–3 is amended by adding a sentence at the end of paragraph (c)(1)(i) to read as follows:

§ 1.338–3 Qualification for the section 338 election.

* * * * *

(c) * * *

(1) * * *

(i) * * * See § 1.338(h)(10)–1T(c)(2) for special rules concerning section 338(h)(10) elections in certain multi-step transactions.

■ 3. Section 1.338(h)(10)–1 is amended as follows:

■ 1. Paragraphs (c)(2), (c)(3) and (c)(4) are redesignated as paragraphs (c)(3), (c)(4) and (c)(5) respectively.

■ 2. A newly designated paragraph (c)(2) is added.

The revisions and addition read as follows:

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

* * * * *

(c) * * *

(2) [Reserved] For further guidance see § 1.338(h)(10)–1T(c)(2).

* * * * *

■ 4. Section 1.338(h)(10)–1T is added to read as follows:

§ 1.338(h)(10)–1T Deemed asset sale and liquidation (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see § 1.338(h)(10)–1(a) through (c)(1).

(c)(2) *Availability of section 338(h)(10) election in certain multi-step transactions.* Notwithstanding anything to the contrary in § 1.338–3(c)(1)(i), a section 338(h)(10) election may be made for T where P's acquisition of T stock, viewed independently, constitutes a qualified stock purchase and, after the stock acquisition, T merges or liquidates into P (or another member of the affiliated group that includes P), whether or not, under relevant provisions of law, including the step transaction doctrine, the acquisition of the T stock and the merger or liquidation of T qualify as a reorganization described in section 368(a). If a section 338(h)(10) election is made in a case where the acquisition of T stock followed by a merger or liquidation of T into P qualifies as a reorganization described in section 368(a), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and is not

treated as part of a reorganization described in section 368(a).

(c)(3) through (e) *(Example 10)* [Reserved]. For further guidance, see § 1.338(h)(10)–1(c)(3) through (e) *(Example 10)*.

(e) *Example 11. Stock acquisition followed by upstream merger—without section 338(h)(10) election.* (i) P owns all the stock of Y, a newly formed subsidiary. S owns all the stock of T. Each of P, S, T and Y is a domestic corporation. P acquires all of the T stock in a statutory merger of Y into T, with T surviving. In the merger, S receives consideration consisting of 50% P voting stock and 50% cash. Viewed independently of any other step, P's acquisition of T stock constitutes a qualified stock purchase. As part of the plan that includes P's acquisition of the T stock, T subsequently merges into P. Viewed independently of any other step, T's merger into P qualifies as a liquidation described in section 332. Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into P as an acquisition by P of T's assets in a reorganization described in section 368(a). P and S do not make a section 338(h)(10) election with respect to P's purchase of the T stock.

(ii) Because P and S do not make an election under section 338(h)(10) for T, P's acquisition of the T stock and T's merger into P is treated as part of a reorganization described in section 368(a).

Example 12. Stock acquisition followed by upstream merger—with section 338(h)(10) election. (i) The facts are the same as in *Example 11* except that P and S make a joint election under section 338(h)(10) for T.

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of the T stock is treated as a qualified stock purchase and P's acquisition of the T stock is not treated as part of a reorganization described in section 368(a).

Example 13. Stock acquisition followed by brother-sister merger—with section 338(h)(10) election. (i) The facts are the same as in *Example 12*, except that, following P's acquisition of the T stock, T merges into X, a domestic corporation that is a wholly owned subsidiary of P. Viewed independently of any other step, T's merger into X qualifies as a reorganization described in section 368(a). Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into X as an acquisition by X of T's assets in a reorganization described in section 368(a).

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and P's acquisition of T stock is not treated as part of a reorganization described in section 368(a).

Example 14. Stock acquisition that does not qualify as a qualified stock purchase followed by upstream merger. (i) The facts are

the same as in *Example 11*, except that, in the statutory merger of Y into T, S receives only P voting stock.

(ii) Pursuant to section 1.338–3(c)(1)(i) and paragraph (c)(2) of this section, no election under section 338(h)(10) can be made with respect to P's acquisition of the T stock because, pursuant to relevant provisions of law, including the step transaction doctrine, that acquisition followed by T's merger into P is treated as a reorganization under section 368(a)(1)(A), and that acquisition, viewed independently of T's merger into P, does not constitute a qualified stock purchase under section 338(d)(3). Accordingly, P's acquisition of the T stock and T's merger into P is treated as a reorganization under section 368(a).

(f) through (g) [Reserved]. For further guidance, see § 1.338(h)(10)–1(f) through (g).

(h) *Effective date.* This section is applicable to stock acquisitions occurring on or after July 9, 2003.

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–17225 Filed 7–8–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9070]

RIN 1545–BB22

Authority To Charge Fees for Furnishing Copies of Exempt Organizations' Material Open to Public Inspection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations amend the existing regulations regarding fees for copies of exempt organizations' material the IRS must make available to the public under section 6104 of the Internal Revenue Code (Code), to provide that copying fees shall be no more than under the fee schedule promulgated pursuant to the Freedom of Information Act (FOIA) by the Commissioner of Internal Revenue (Commissioner) (the "IRS" FOIA fee schedule"). The existing regulations authorize the IRS to charge fees for such copies, but do not stipulate the amount of the fees. These temporary regulations also make a conforming amendment to

the existing regulation concerning the fees that an exempt organization may charge for furnishing copies of such material when required to do so, to provide that these fees shall be no more than the per-page copying fee—without regard to any otherwise applicable fee exclusion for the first 100 pages—under the IRS' FOIA fee schedule. The text of these temporary regulations also serves as the text of the 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: These temporary regulations are effective July 9, 2003.

FOR FURTHER INFORMATION CONTACT:

Sarah Tate, 202-622-4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS' obligation under section 6104 of the Code to make certain information open to public inspection is satisfied by making the information available to the public at such times and places as the IRS shall reasonably prescribe. The existing regulations provide that copies of the information that the IRS must make open to public inspection shall be available to members of the public upon written request. Currently, § 301.6104(a)-6(d) provides that the IRS will charge a "fee" for copies of material available to the public under section 6104(a)(1) of the Code, including approved applications for recognition of tax-exempt status and supporting papers. Currently, § 301.6104(b)-1(d)(4) provides that the Commissioner may prescribe a "reasonable fee" for copies of material available to the public under section 6104(b) of the Code, including certain information furnished on exempt organization annual information returns.

These temporary regulations amend the existing regulations to clarify that any fee assessed by the IRS in the exercise of its discretion, whether in the case of requests for photocopies, or for special media (e.g., computer printouts, transcripts, CD-ROM reproductions), shall be no more than the fee under the IRS' FOIA fee schedule. For paper copies, the IRS' FOIA fee schedule, at 26 CFR 601.702(f)(3)(iv), grants the first 100 pages free of charge to requesters other than commercial use requesters, but otherwise sets a per-page copying fee applicable to all requesters. The IRS' FOIA fee schedule, at 26 CFR 601.702(f)(5)(iii)(B), also authorizes fees based on the actual costs of non-paper products, such as computer disks.

Currently, § 301.6104(d)-1(d)(3)(i) provides that an exempt organization required to furnish copies to a requester may charge a copying fee corresponding to that which the IRS may charge. These temporary regulations amend existing regulation § 301.6104(d)-1(d)(3)(i) to make clear that an exempt organization may charge the applicable per-page copying fee—for any number of pages—under the IRS' FOIA fee schedule. An exempt organization need not provide the first 100 pages of copies free of charge to requesters other than commercial use requesters as the IRS does.

Through December 18, 2002, the IRS' FOIA fee schedule set fees of \$1.00 for the first page and \$.15 for each subsequent page of exempt organization returns and related documents. 26 CFR 601.702(f)(5)(iv)(B). Effective December 19, 2002, the fees are to be established by the Commissioner from time to time. 26 CFR 601.702(f) as updated at 67 FR 69673, 69682. Currently, the Commissioner has established fees of \$.20 per page, up to 8 ½ by 14 inches, made by photocopy or similar process, and actual cost for other types of duplication. 31 CFR 1.7(g)(1)(i), (ii) and (iii).

Explanation of Provisions

These temporary regulations amend § 301.6104(a)-6(d) and § 301.6104(b)-1(d)(4) to provide that the fees the IRS charges for furnishing copies of materials available to the public under § 301.6104(a)-6(d) and § 301.6104(b)-1(d)(4) shall be no more than under the IRS' FOIA fee schedule.

These temporary regulations also amend § 301.6104(d)-1(d)(3)(i) to make clear that an exempt organization may charge the applicable per-page copying fee under the IRS' FOIA fee schedule—without regard to any otherwise applicable fee exclusion for the first 100 pages.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel

of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Sarah Tate, Office of Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

Adoption of Amendments to the Regulations

- Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

- 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.6104(a)-6(d) is also issued under 5 U.S.C. 552.

Section 301.6104(b)-1(d)(4) is also issued under 5 U.S.C. 552.

Section 301.6104(d)-1(d)(3)(i) is also issued under 5 U.S.C. 552. * * *

- 2. In § 301.6104(a)-6(d), the fourth sentence is revised to read as follows:

§ 301.6104(a)-6 Procedural rules for inspection.

* * * * *

(d) * * * Any fees the Internal Revenue Service may charge for furnishing copies under this section shall be no more than under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner from time to time. * * *

- 3. In § 301.6104(b)-1(d)(4), the last sentence is revised to read as follows:

§ 301.6104(b)-1 Publicity of information on certain information returns.

* * * * *

(d) * * * Any fees the Internal Revenue Service may charge for furnishing copies under this section shall be no more than under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner from time to time.

- 4. In § 301.6104(d)-1(d)(3)(i), the second sentence is revised to read as follows:

§ 301.6104(d)-1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

* * * * *

(d) * * * A fee is reasonable only if it is no more than the total of the applicable per-page copying charge prescribed by the fee schedule

promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552, by the Commissioner from time to time, and the actual postage costs incurred by the organization to send the copies. The applicable per-page copying charge shall be determined without regard to any applicable fee exclusion provided in the fee schedule for an initial or *de minimis* number of pages (*e.g.* the first 100 pages). * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 1, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03-17224 Filed 7-8-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-02-003]

Safety Zone; Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Milwaukee Zone during July 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Milwaukee Zone.

DATES: 33 CFR 165.909 is effective from 12:01 a.m. (CST) on July 1, 2003 through 11:59 p.m. (CST) on July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747-7155.

SUPPLEMENTARY INFORMATION:

The Coast Guard is implementing the permanent safety zones in 33 CFR 165.909 (published July 3, 2002, in the *Federal Register*, 67 FR 44588), for fireworks displays in the Captain of the Port Milwaukee Zone during July 2003. The following safety zones are in effect for fireworks displays occurring in the month of July 2003:

U.S. Bank (Firstar) Fireworks. This safety zone will be enforced on July 3, 2003 from 9:20 p.m. until 10:10 p.m. In

the event of inclement weather, the rain date will be during these same times on July 4, 2003.

Festa Italiana Fireworks. This safety zone will be enforced on July 17th through the 20th, 2003 from 10 p.m. until 10:30 p.m.

Dated: June 30, 2003.

Virginia J. Kammer,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Milwaukee.

[FR Doc. 03-17369 Filed 7-8-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP SAN JUAN-03-104]

RIN 1625-AA00

Safety Zone: Swimming Across San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone for the Swimming Across San Juan Harbor event in San Juan Harbor, San Juan, Puerto Rico. This safety zone is necessary to protect swimmers and provide for the safety of life on navigable waters by excluding vessels from transiting in the swimming area.

DATES: This rule is effective from Sunday 9 a.m. on July 20, 2003 through 12 p.m. (noon) on Sunday July 20, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan-03-104] and are available for inspection or copying at Marine Safety Office San Juan, #5 La Puntilla Final, Old San Juan, PR 00901-1800 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes, Greater Antilles Section at (787) 729-5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to

the public interest since immediate action is needed to protect the public and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*.

Background and Purpose

This rule is required to provide for the safety of life on navigable waters because numerous swimmers will be crossing navigable channels in the commercial port of San Juan. This rule creates a safety zone area that will prohibit non-participating vessels from entering the safety zone during the event without the authorization of the Captain of the Port of San Juan, Puerto Rico. The safety zone area is based on a rectangular shape starting at point 1, La Puntilla Final, Coast Guard Base at position 18°27'33" N 066°07'00" W, then South to point 2, Catano Ferry Pier at position 18°26'36" N 066°07'00" W, then East to point 3, Punta Catano at position 18°26'40" N 066°06'48" W, then North to point 4 at position 18°27'40" N 066°06'49" W and back to origin.

Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 or telephone number (787) 729-2041. The United States Coast Guard Communications Center will notify the public via Broadcast Notice to Mariners VHF Marine Band Radio, Channel 22 when the zone is activated.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security. The Coast Guard expects the economic impact of this safety zone to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Homeland Security is unnecessary because entry into the safety zone is prohibited for a limited time and vessels will still be able to transit around the safety zone and may be allowed to enter the safety zone with the express permission of the Captain of the Port of San Juan or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard