

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 1.6050L-2T is added to read as follows:

§ 1.6050L-2T Information returns by donees relating to qualified intellectual property contributions (temporary).

(a) In general. Each donee organization described in section 170(c), except a private foundation (as defined in section 509(a)), other than a private foundation described in section 170(b)(1)(E), that receives or accrues net income during a taxable year from any qualified intellectual property contribution (as defined in section 170(m)(8)) must make an annual information return on the form prescribed by the Internal Revenue Service. The information return is required for any taxable year of the donee that includes any portion of the 10-year period beginning on the date of the contribution, but not for taxable years beginning after the expiration of the legal life of the qualified intellectual property.

(b) Information required to be provided on return. The information return required by section 6050L and paragraph (a) of this section shall include the following—

(1) The name, address, taxable year, and employer identification number of the donee making the information return;

(2) The name, address, and taxpayer identification number of the donor;

(3) A description of the qualified intellectual property in sufficient detail to identify the qualified intellectual property received by such donee;

(4) The date of the contribution to the donee;

(5) The amount of net income of the donee for the taxable year that is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section); and

(6) Such other information as may be specified by the form or its instructions.

(c) Special rule—statement to be furnished to donors—(1) In general.

Every donee making an information return under section 6050L and this section with respect to a qualified intellectual property contribution shall furnish a copy of the information return to the donor of the property. The information return required by section 6050L and this section shall be furnished to the donor on or before the date the donee is required to file the return with the Internal Revenue Service.

(2) Before a form is prescribed by the Internal Revenue Service. Before a form is prescribed by the Internal Revenue Service, every donee required to make an information return under section 6050L and this section with respect to qualified intellectual property contributions shall furnish, in lieu of the prescribed form, a statement to the donor that includes all information required by paragraphs (b)(1) through (b)(5) of this section. This statement shall be furnished to the donor on or before the date the donee would have been required to file the return with the Internal Revenue Service under paragraph (d)(2)(i) of this section had a form been prescribed.

(3) Donee taxable years ending prior to or on the date of issuance of regulations. If the donee's taxable year to which net income from the qualified intellectual property is properly allocable ends prior to or on May 23, 2005, the donee shall furnish the information required under section 6050L and this section to the donor on or before the 90th day following May 23, 2005.

(d) Place and time for filing information return—(1) Place for filing. The information return required by section 6050L and this section shall be filed with the Internal Revenue Service location listed on the prescribed form or in its instructions.

(2) Time for filing—(i) In general. A donee is required to file the return required by section 6050L and this section on or before the last day of the first full month following the close of the donee's taxable year to which net income from the qualified intellectual property is properly allocable.

(ii) Before a form is prescribed by the Internal Revenue Service. If the information return required by section 6050L and this section is required to be filed before a form is prescribed by the Internal Revenue Service, then an information return for such taxable year shall be filed on or before the last day of the second full month following the release of such prescribed form by the Internal Revenue Service.

(e) Penalties. For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) Effective date. The rules of this section apply to qualified intellectual property contributions made after June 3, 2004.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

(b) * * *

Table with 2 columns: CFR part or section where identified and described, Current OMB control No. Row 1: 1.6050L-2T, 1545-1932

Mark E. Matthews, Deputy Commissioner for Services and Enforcement.

Approved: May 16, 2005.

Eric Solomon, Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9203]

RIN 1545-BC32

Deemed Election To Be an Association Taxable as a Corporation for a Qualified Electing S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that deem certain eligible entities that file timely S corporation elections to have elected to be classified as associations taxable as corporations. These regulations affect certain eligible entities filing timely elections to be S corporations on or after July 20, 2004.

DATES: *Effective Date:* These regulations are effective July 20, 2004.

FOR FURTHER INFORMATION CONTACT: Rebekah A. Myers, (202) 622-3050 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301. On July 20, 2004, temporary regulations (TD 9139) relating to entity classification elections for entities that elect to be S corporations under section 1362(a) were published in the **Federal Register** (69 FR 43317). A notice of proposed rulemaking (REG-131786-03) cross-referencing the temporary regulations also was published in the **Federal Register** on July 20, 2004. No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received. The proposed regulations are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Section 301.7701-3(a) provides that an eligible entity with two or more owners may elect to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner may elect to be classified as an association or to be disregarded as an entity separate from its owner. Section 301.7701-3(b) provides that, unless the entity elects otherwise, a domestic eligible entity is a partnership if it has two or more owners or is disregarded as an entity separate from its owner if it has a single owner. Section 301.7701-3(c) describes the time and place for filing an entity classification election. Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified as other than its default classification or to change its classification by filing Form 8832, "Entity Classification Election", with the service center designated on the form.

A taxpayer whose default classification is a partnership or a disregarded entity may seek to be classified as an S corporation. For S elections that were filed prior to the effective date of these regulations, the taxpayer was required to elect to be classified as an association under § 301.7701-3(c)(1)(i) by filing Form 8832 and to elect to be an S corporation under section 1362(a) by filing Form 2553, "Election by a Small Business Corporation." These regulations simplify these paperwork requirements by eliminating, in certain cases, the

requirement that the entity elect to be classified as an association. Instead, an eligible entity that makes a timely and valid election to be classified as an S corporation will be deemed to have elected to be classified as an association taxable as a corporation.

If the S election and the entity classification election are filed late, the entity may need to submit a ruling request under § 301.9100-3 to file a late entity classification election and under section 1362(b)(5) to file a late S corporation election. However, Rev. Proc. 2004-48 (2004-32 I.R.B. 172) provides relief for these entities in some cases.

Effective Dates

These final regulations apply to elections to be an S corporation filed on or after July 20, 2004. However, eligible entities that timely filed S elections before July 20, 2004 may also rely on the provisions of the regulation.

Special Analysis

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 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 Internal Revenue Code, the notice of proposed rulemaking that preceded 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 this regulation is Rebekah A. Myers, Office of 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 301

Employment taxes, Estate and excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** Section 301.7701-3 is amended by revising paragraphs (c)(1)(v)(C) and (h)(3) to read as follows:

§ 301.7701-3 Classification of certain business entities.

* * * * *

(c) * * *

(1) * * *

(v) * * *

(C) *S corporations.* An eligible entity that timely elects to be an S corporation under section 1362(a)(1) is treated as having made an election under this section to be classified as an association, provided that (as of the effective date of the election under section 1362(a)(1)) the entity meets all other requirements to qualify as a small business corporation under section 1361(b). Subject to § 301.7701-3(c)(1)(iv), the deemed election to be classified as an association will apply as of the effective date of the S corporation election and will remain in effect until the entity makes a valid election, under § 301.7701-3(c)(1)(i), to be classified as other than an association.

* * * * *

(h) * * *

(3) *Deemed elections for S corporations.* Paragraph (c)(1)(v)(C) of this section applies to timely S corporation elections under section 1362(a) filed on or after July 20, 2004. Eligible entities that filed timely S elections before July 20, 2004 may also rely on the provisions of the regulation.

§ 301.7701-3T [Removed]

■ **Par. 3.** Section 301.7701-3T is removed.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 12, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

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