

(1) Any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

(2) Does not include a prototype of a motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

(b) *ATV action plan* means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the ATVs, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading "The Undertakings of the Companies" in the Commission Notice published in the **Federal Register** on September 9, 1998 (63 FR 48199-48204).

#### § 1420.3 Requirements for four-wheel ATVs.

(a) Each ATV shall comply with all applicable provisions of the American National Standard for Four Wheel All-Terrain Vehicles (American National Standards Institute, Inc. ANSI/SVIA 1-2007), approved July 23, 2007. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, California 92618-3806; telephone 949-727-3727 ext. 3023; <http://www.svia.org>. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD. 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) Each ATV must be subject to an ATV action plan filed with the Commission before August 14, 2008 or subsequently filed with and approved by the Commission, and shall bear a label certifying such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject.

(c) The ATV manufacturer or distributor shall be in compliance with all provisions of the applicable ATV action plan.

#### § 1420.4 Restrictions on three-wheel ATVs.

Until a mandatory consumer product safety standard applicable to three-wheel ATVs promulgated pursuant to the Consumer Product Safety Act is in effect, new three wheel ATVs may not be imported into or distributed in commerce in the United States.

Dated: November 7, 2008.

**Todd Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

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### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

#### 18 CFR Part 40

[Docket No. RM08-3-000; Order No. 716]

#### Mandatory Reliability Standard for Nuclear Plant Interface Coordination

November 7, 2008.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Energy Regulatory Commission published in the **Federal Register** of October 27, 2008, a final rule approving the Nuclear Plant Interface Coordination Reliability Standard developed by the North American Electric Reliability Corporation (NERC) and directing NERC to develop a modification the Reliability to address certain concerns. This document corrects references in two footnotes of the final rule.

**DATES:** *Effective Date:* November 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8744.

**SUPPLEMENTARY INFORMATION:** In FR Document E8-25139, published October 27, 2008 (73 FR 63770) make the following corrections to citations in Footnotes 51 and 60:

1. On page 63781, column 1, Footnote 51, second sentence, change "125 FERC ¶ 61,062." to "125 FERC ¶ 61,064."
2. On page 6378, column 2, footnote 60, second sentence, change "125 FERC ¶ 61,062" to "125 FERC ¶ 61,064."

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8-26971 Filed 11-13-08; 8:45 am]

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### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### 26 CFR Part 1

[TD 9416]

RIN 1545-BH74

#### Determining the Amount of Taxes Paid for Purposes of Section 901; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD 9416) that were published in the **Federal Register** on Wednesday, July 16, 2008 (73 FR 40727) under section 901 of the Internal Revenue Code providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit.

**DATES:** *Effective Date:* This correction is effective November 14, 2008, and is applicable on July 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michael Gilman, (202) 622-3850 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final and temporary regulations that are the subjects of this document are under section 901 of the Internal Revenue Code.

##### Need for Correction

As published, final and temporary regulations (TD 9416) contain errors that may prove to be misleading and are in need of clarification.

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

Income taxes, Reporting and recordkeeping requirements.

##### Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

#### 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 1.901-2T is amended as follows:

1. The first sentence of paragraph (e)(5)(iv)(C)(5)(i) is revised.
2. Paragraph (e)(5)(iv)(D) *Example 5.* paragraphs (i)(A), (i)(B) and (ii) are revised.

■ 3. The first sentence of paragraph (e)(5)(iv)(D) *Example 8.*(i)(B) is revised.

**§ 1.901-2T Income, war profits, or excess profits tax paid or accrued (temporary).**

\* \* \* \* \*  
 (e) \* \* \*  
 (5) \* \* \*  
 (iv) \* \* \*  
 (C) \* \* \*  
 (5) \* \* \*

(i) *In general.* The term *passive investment income* means income described in section 954(c), as modified by this paragraph (e)(5)(iv)(C)(5)(i) and paragraph (e)(5)(iv)(C)(5)(ii) of this section. \* \* \*

\* \* \* \* \*  
 (D) \* \* \*

*Example 5.* \* \* \*  
 (i) \* \* \*

(A) A country X corporation (Foreign Bank) contributes \$2 billion to a newly-formed country X company (Newco) in exchange for all of the common stock of Newco and securities that are treated as debt of Newco for U.S. tax purposes and preferred stock of Newco for country X tax purposes. A domestic corporation (USP) contributes \$1 billion to Newco in exchange for securities that are treated as preferred stock of Newco for U.S. tax purposes and debt of Newco for country X tax purposes. Newco loans the \$3 billion to a wholly-owned, country X subsidiary of Foreign Bank (FSub) in return for a \$3 billion, seven-year note paying interest currently. The Newco securities held by USP entitle the holder to fixed distributions of \$4 million per year, and the Newco securities held by Foreign Bank entitle the holder to receive \$82 million per year, payable only on maturity of the \$3 billion FSub note in year 7. At the end of year 5, pursuant to a prearranged plan, Foreign Bank acquires USP's Newco securities for a prearranged price of \$1 billion. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. Under an income tax treaty between country X and the United States, country X does not impose country X tax on interest received by U.S. residents from sources in country X. None of Foreign Bank's stock is owned, directly or indirectly, by USP or any shareholders of USP that are domestic corporations, U.S. citizens or resident alien individuals.

(B) In each of years 1 through 7, FSub pays Newco \$124 million of interest on the \$3 billion note. Newco distributes \$4 million to USP in each of years 1 through 5. The distributions are deductible for country X tax purposes, and Newco pays country X \$36 million with respect to \$120 million of taxable income from the FSub note in each year. For U.S. tax purposes, in each year Newco's post-1986 undistributed earnings are increased by \$124 million of interest income and reduced by accrued interest expense with respect to the Newco securities held by Foreign Bank.

(ii) *Result.* The \$36 million payment to country X is not a compulsory payment, and

thus is not an amount of tax paid, because the foreign payment is attributable to a structured passive investment arrangement. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(5) of this section; Newco's only asset, a note of FSub, is held to produce such income; the payment to country X is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section. Second, if the foreign payment were an amount of tax paid, USP would be deemed to pay its pro rata share of the foreign payment under section 902(a) in each of years 1 through 5 and, therefore, would be eligible to claim a credit under section 901(a). Third, USP would not pay any country X tax if it directly owned its proportionate share of Newco's assets, a note of FSub. Fourth, for country X tax purposes, Foreign Bank is eligible to receive a tax-free distribution of \$82 million attributable of each of years 1 through 5, and that amount corresponds to more than 10 percent of the foreign base with respect to which USP's share of the foreign payment was imposed. Fifth, Foreign Bank is a counterparty because it owns stock of Newco for country X tax purposes and none of Foreign Bank's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the United States and country X treat various aspects of the arrangement differently, including whether the Newco securities held by Foreign Bank and USP are debt or equity. The amount of credits claimed by USP if the payment to country X were an amount of tax paid is materially greater than it would be if, for U.S. tax purposes, the securities held by USP were treated as debt or the securities held by Foreign Bank were treated as equity, and the amount of income recognized by Newco for U.S. tax purposes is materially less than the amount of income recognized for country X tax purposes. Because the payment to country X is not an amount of tax paid, USP is not deemed to pay any country X tax under section 902(a). USP has dividend income of \$4 million in each of years 1 through 5.

\* \* \* \* \*

*Example 8.* \* \* \*

(i) \* \* \*

(B) The transaction is structured in such a way that, for U.S. tax purposes, there is a loan of \$1.5 billion from FC to USP, and USP is the owner of the class C stock and the class A stock. \* \* \*

\* \* \* \* \*

**Guy Traynor,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9428]

RIN 1545-BD72

**Section 1367 Regarding Open Account Debt; Correction**

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (TD 9428) that were published in the **Federal Register** on Monday, October 20, 2008 (73 FR62199) relating to the treatment of open account debt between S corporations and their shareholders. These final regulations provide rules regarding the definition of open account debt and the adjustments in basis of any indebtedness of an S corporation to a shareholder under section 1367(b)(2) of the Internal Revenue Code for shareholder advances and repayments on advances of open account debt. The regulations affect shareholders of S corporations and are necessary to provide guidance needed to comply with the applicable tax law.

**DATES:** *Effective Date:* This correction is effective November 14, 2008, and is applicable on October 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stacy L. Short or Deane M. Burke, (202) 622-3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subjects of this document are under section 1367 of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 9428) contain errors that may prove to be misleading and are in need of clarification.

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

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—INCOME TAXES**

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