

days after the end of each fiscal year of the gaming operation.

(b) If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), setting forth the results of the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be received by the Commission within 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new business year.

(c) When gaming ceases to operate and the tribal gaming regulatory authority has terminated the facility license required by § 559.6, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be received by the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

35. Revise § 571.14 to read as follows:

**§ 571.14 Relationship of financial statements to fee assessment reports.**

A tribe shall reconcile its Commission fee assessment reports, submitted under 25 CFR part 514, with its audited or reviewed financial statements for each location and make available such reconciliation upon request by the Commission's authorized representative.

36. The authority citation for part 573 continues to read as follows:

**Authority:** 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

37. Add new paragraph (a)(13) to § 573.6 to read as follows:

**§ 573.6 Order of temporary closure.**

\* \* \* \* \*

(13) A gaming facility operates on Indian lands not eligible for gaming under 25 U.S.C. 2703(4); 2710(a), (b)(1), and (d)(1); and 2719.

\* \* \* \* \*

**Philip N. Hogen,**  
*Chairman.*

**Norman H. DesRosiers,**  
*Vice Chairman.*

[FR Doc. E8-30019 Filed 12-19-08; 8:45 am]

**BILLING CODE 7565-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-113462-08]

RIN 1545-BH77

**Conduit Financing Arrangements**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to conduit financing arrangements issued under the authority granted by section 7701(l) of the Internal Revenue Code (Code). The proposed regulations apply to multiple-party financing arrangements that are effected through disregarded entities, and are necessary in order to determine which of those arrangements should be recharacterized under section 7701(l) and Treas. Reg. § 1.881-3.

**DATES:** Written or electronic comments and requests for a public hearing must be received by March 23, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-113462-08), Internal Revenue Service, room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-113462-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-113462-08).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Quyen Huynh at (202) 622-3880 or John H. Seibert at (202) 622-3860; concerning submissions of comments, Oluwafunmilayo Taylor, at (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 7701(l) of the Code authorizes the Secretary to prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent the avoidance of any tax imposed by the Code. In Treasury decision 8611 (1995-37 IRB 20; 60 FR 40997), published August 10, 1995, the Treasury Department and the Internal Revenue Service (IRS) issued implementing regulations under Treas.

Reg. § 1.881-3 relating to conduit financing arrangements pursuant to the authority granted by section 7701(l).

In general, § 1.881-3 allows the IRS to disregard the participation of one or more intermediate entities in a financing arrangement where such entities are acting as conduit entities, and to recharacterize the financing arrangement as a transaction directly between the remaining parties to the financing arrangement for purposes of imposing tax under sections 871, 881, 1441 and 1442 of the Code. Section 1.881-3(a)(2)(i)(A) of the regulations defines a financing arrangement to mean a series of financing transactions by which one person (the financing entity) advances money or other property, or grants rights to use property, and another person (the financed entity) receives money or other property, or rights to use property, if the advance and receipt are effected through one or more other persons (intermediate entities). Except in cases to which § 1.881-3(a)(2)(i)(B) (special rule for related parties) applies, the regulations apply only if financing transactions as defined in § 1.881-3(a)(2)(ii) link the financing entity, each of the intermediate entities, and the financed entity.

Since the publication of § 1.881-3 on August 10, 1995, the Treasury Department and IRS issued the so-called "check-the-box" regulations, under §§ 301.7701-1 through 301.7701-3, effective January 1, 1997 (TD 8697, 1997-1 CB 215; 61 FR 66854). Section 301.7701-3 provides, in part, that an entity that is not classified as a corporation and that has a single owner may elect to be disregarded as an entity separate from its owner (a disregarded entity).

The Treasury Department and IRS are aware that issues have arisen regarding the proper treatment of disregarded entities under § 1.881-3. These proposed regulations clarify that a disregarded entity is a person for purposes of § 1.881-3. Thus, transactions that a disregarded entity enters into will be taken into account for purposes of determining whether a financing arrangement exists.

The Treasury Department and IRS are continuing to study conduit financing arrangements and may issue separate guidance to address the treatment under § 1.881-3 of certain hybrid instruments. Specifically, the Treasury Department and IRS are studying transactions where a financing entity advances cash or other property to an intermediate entity in exchange for a hybrid instrument that is treated as debt under the laws of the foreign jurisdiction where the

intermediate entity is resident and is not treated as debt for U.S. federal tax purposes. The issue under consideration is whether such instruments should constitute a financing transaction under § 1.881-3(a)(2)(ii)(A) and part of a financing arrangement within the meaning of § 1.881-3(a)(2)(i)(A). No inference should be drawn from the approaches described in this preamble regarding the treatment of such instruments under current law, including judicial doctrines with respect to conduit financing transactions.

One possible approach is to treat all transactions involving such hybrid instruments between a financing entity and an intermediate entity as financing transactions under § 1.881-3(a)(2)(ii)(A). Comments are requested on this approach, including whether and to what extent a connection or relationship between the issuer and recipient of the hybrid instrument (for example, an equity ownership percentage) should be required in order to treat such instruments as financing transactions.

Another possible approach is to add additional factors to consider in determining when stock in a corporation (or other similar interest in a partnership or trust) may constitute a financing transaction under § 1.881-3(a)(2)(ii)(B). The additional factors would focus on whether, based on the facts and circumstances surrounding the stock (or other similar interest in a partnership or trust), the financing entity had sufficient legal rights to, or other practical assurances regarding, the payment received by the intermediate entity to treat the stock as a financing transaction. Some possible factors to indicate the presence of a financing transaction might include:

(1) Intent of the parties to pay all or substantially all payments received by the intermediate entity to the financing entity;

(2) History of payment of amounts received by the intermediate entity to the financing entity; and

(3) Precedence of the obligees over other creditors regarding the payment of interest and principal, currently or in bankruptcy.

Comments are requested concerning other possible approaches and any additional factors that the Treasury Department and IRS should consider in expanding the conduit financing regulations under § 1.881-3.

#### Explanation of Provisions

Section 1.881-3(a)(2)(i)(C) of the proposed regulations provides that for purposes of this section, the term *person* includes a business entity that is

disregarded as an entity separate from its single member owner under §§ 301.7701-1 through 301.7701-3. Because a disregarded entity is a person, any transaction that it enters into will be taken into account for purposes of determining whether a conduit financing arrangement exists.

These proposed regulations also modify the parenthetical in § 1.881-3(a)(2)(ii)(A)(2) and § 1.881-3(a)(2)(ii)(B)(1). The proposed regulations also correct a typographical error in § 1.881-3(a)(3)(ii)(B) of the final regulations and update titles and cross-references in the final regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Paul J. Carlino, Office of Associate Chief Counsel (International). 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.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.881-3 is amended by:

1. Removing the language “district director” throughout this section and adding “director of field operations” in its place.

2. Removing the language “§ 1.1441-3(j)” throughout this section and adding “§ 1.1441-3(g)” in its place.

3. Removing the language “§ 1.1441-7(d)” throughout this section and adding “§ 1.1441-7(f)” in its place.

4. In the last sentence of paragraph (a)(3)(ii)(B), removing the second “financed” and adding “financing” in its place.

5. Removing the parenthetical language “(or a similar interest in a partnership or trust)” in paragraphs (a)(2)(ii)(A)(2) and (a)(2)(ii)(B)(1) and adding “(or a similar interest in a partnership, trust, or other person)” in its place.

6. Adding a new paragraph (a)(2)(i)(C).

7. In paragraph (e), redesignating *Examples* 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 as *Examples* 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, respectively.

8. Adding a new *Example* 3 in paragraph (e).

9. Adding a new sentence at the end of paragraph (f).

The additions read as follows:

#### § 1.881-3 Conduit financing arrangements.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) *Treatment of disregarded entities.*

For purposes of this section, the term *person* includes a business entity that is disregarded as an entity separate from its single member owner under §§ 301.7701-1 through 301.7701-3.

\* \* \* \* \*

(e) *Examples.* \* \* \*

*Example 3. Participation of a disregarded intermediate entity.* (i) The facts are the same as in *Example 2*, except that, in addition, FS is an entity that is disregarded as an entity separate from its owner, FP, under § 301.7701-3. Under paragraph (a)(2)(i)(C) of this section, FS is a person and therefore may

itself be an intermediate entity that is linked by financing transactions to other persons in a financing arrangement. The DS note held by FS and the FS note held by FP are financing transactions within the meaning of paragraph (a)(2)(ii) of this section, and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section.

\* \* \* \* \*

(f) *Effective/applicability date.* \* \* \* Paragraph (a)(2)(i)(C) of this section is effective for payments made on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-30301 Filed 12-19-08; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-160872-04]

RIN 1545-BF59

#### Section 6707 and the Failure To Furnish Information Regarding Reportable Transactions

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 6707 of the Internal Revenue Code (Code), which provide the rules relating to the assessment of penalties against material advisors who fail to timely file a true and complete return required under section 6111(a). The regulations implement the amendments to section 6707 by the American Jobs Creation Act and promote material advisors' compliance with the regulations under section 6111. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111.

**DATES:** Written or electronic comments and request for a public hearing must be received by March 23, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-160872-04), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-160872-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue,

NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-160872-04).

**FOR FURTHER INFORMATION CONTACT:** Matthew S. Cooper, (202) 622-4940 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulation Branch at (202) 622-7180 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6707 of the Internal Revenue Code. Section 6707 was originally added to the Code by section 141(b) of the Tax Reform Act of 1984, Public Law 98-369, 98 Stat. 494. At that time, section 6707 imposed a penalty for failing to timely register a tax shelter or for filing false or incomplete information with respect to the tax shelter registration. Treasury Regulation § 301.6707-1T was issued shortly after section 6707 became law.

The American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418 (AJCA), was enacted on October 22, 2004. AJCA section 816 amended section 6707 to impose a penalty on a material advisor who is required to file a return under section 6111(a) with respect to any reportable transaction, and who fails to file a timely return or who files a return with false or incomplete information with respect to the reportable transaction. Section 6707, as amended, is effective for returns due after October 22, 2004. The amount of the penalty for failing to timely file or filing a return with false or incomplete information with respect to any reportable transaction other than a listed transaction is \$50,000. For listed transactions, the amount of the penalty is the greater of (1) \$200,000, or (2) 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that the material advisor provides with respect to the listed transaction before the date the return is filed under section 6111. If the penalty is imposed with respect to a listed transaction and the failure or action subject to the penalty was intentional, the penalty is the greater of (1) \$200,000, or (2) 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that the material advisor provides with respect to the listed transaction before the date the return is

filed under section 6111. The provisions of section 6707A(d) regarding rescission of the penalty apply to any penalty assessed under section 6707.

To implement the pertinent provisions of the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004-80 (2004-2 CB 963, December 13, 2004); Notice 2005-17 (2005-1 CB 606, February 22, 2005); Notice 2005-22 (2005-1 CB 756, March 21, 2005); and Notice 2006-6 (2006-1 CB 385, January 30, 2006) (see § 601.601(d)(2)(ii)(b)). These notices provided guidance to a material advisor required to file a return under section 6111, including rules regarding the date by which the material advisor must file the return and the information the material advisor must include on the return. Subsequently, the IRS and Treasury Department proposed amendments to the rules relating to the disclosure of reportable transactions by material advisors under section 6111 (see Prop. Treas. Reg. § 301.6111-3, 71 FR 64501) and finalized those proposed regulations as TD 9351 in the **Federal Register** (72 FR 43157). The IRS and Treasury Department are now proposing rules relating to the AJCA amendments to section 6707.

Rev. Proc. 2007-21, 2007-9 IRB 613, which was published on February 26, 2007, provides guidance to persons against whom a penalty under section 6707 or 6707A is assessed regarding procedures for requesting that the Commissioner of the Internal Revenue Service rescind all or a portion of these penalties with respect to a reportable transaction other than a listed transaction.

#### Explanation of Provisions

These proposed regulations provide rules reflecting the AJCA amendments to the section 6707 penalty for the failure to timely file a return under section 6111 or for filing a return with false or incomplete information regarding reportable transactions. The scope of the changes to the section 6707 penalty provisions by the AJCA necessitates a change to the temporary regulations promulgated under former section 6707.

Under these proposed revisions, a penalty under section 6707 may be assessed against each material advisor required to file a return under section 6111 who fails to file a timely return in accordance with § 301.6111-3(e) or files a return with false or incomplete information. Accordingly, if more than one material advisor is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under