

(e) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

(f) Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

#### **§ 1216.307 Programmatic EAs, and EISs, and tiering.**

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow "tiering" of NEPA documentation for subsequent or specific actions.

#### **§ 1216.308 Supplemental EAs and EISs.**

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

#### **§ 1216.309 Mitigation and monitoring.**

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSI and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

#### **§ 1216.310 Classified actions.**

(a) Classification does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

(b) When classified information can reasonably be separated from other information and a meaningful environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the

form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

#### **§ 1216.311 Emergency responses.**

(a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in §§ 1216.305 and 1216.307 of this subpart, then the following provisions apply:

(1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.

(2) [Reserved]

(b) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

(c) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

#### **Appendix A to Subpart 1206.3— Acronyms and Definitions**

CatEx Categorical Exclusion  
CEQ Council on Environmental Quality  
CFR Code of Federal Regulations  
CWA Clean Water Act  
CZMA Coastal Zone Management Act  
DoI (U.S.) Department of the Interior  
EA Environmental Assessment  
EMD Environmental Management Division  
EIS Environmental Impact Statement  
FONSI Finding of No Significant Impact  
FR Federal Register  
GSA General Services Administration  
NEPA National Environmental Policy Act  
NHPA National Historic Preservation Act  
SEO Senior Environmental Official  
OGC Office of the General Counsel

PPO Planetary Protection Office  
REC Record of Environmental  
Consideration  
ROD Record of Decision  
U.S.C. United States Code

#### **Definitions**

1. A2 Mission Multiple—The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the level of review and approval required for launch.
2. Earth Return Mission (also known as a Sample Return)—A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.
3. NASA Senior Environmental Official—The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.
4. Record of Environmental Consideration—A brief document that is used to describe a proposed action, identify the applicable categorical exclusion, and explain why further environmental analysis is not required.
5. Restricted Earth Return—A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.
6. Space Flight Projects/Programs—Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.
7. Unrestricted Earth Return—NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

Dated: December 23, 2011.

**Charles F. Bolden, Jr.,**

*Administrator, National Aeronautics and  
Space Administration.*

[FR Doc. 2012-1272 Filed 1-20-12; 8:45 am]

**BILLING CODE P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[TD 9573]

**RIN 1545-BF81**

#### **Damages Received on Account of Personal Physical Injuries or Physical Sickness**

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the exclusion from gross income for amounts received on account of personal physical injuries or physical sickness. The final regulations reflect amendments under the Small Business Job Protection Act of 1996. The final regulations affect taxpayers receiving damages on account of personal physical injuries or physical sickness and taxpayers paying these damages.

**DATES:** *Effective Date:* These regulations are effective on January 23, 2012.

*Applicability Date:* For date of applicability, see § 1.104–1(c)(3).

**FOR FURTHER INFORMATION CONTACT:** Sheldon Iskow, (202) 622–4920 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) to reflect amendments made to section 104(a)(2) of the Internal Revenue Code (Code) by section 1605(a) and (b) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1838 (the 1996 Act). On September 15, 2009, a notice of proposed rulemaking (REG–127270–06) was published in the *Federal Register* (74 FR 47152). Written comments responding to the notice of proposed rulemaking were received. The comments are available for public inspection at [www.regulations.gov](http://www.regulations.gov) or on request. A public hearing was requested and held on February 23, 2010. After consideration of all the comments, the proposed regulations are adopted without substantive change by this Treasury decision. The comments are discussed in the preamble.

**Summary of Comments**

The proposed regulations deleted the requirement that to qualify for exclusion from gross income, damages received from a legal suit, action, or settlement agreement must be based upon “tort or tort type rights.” The proposed regulations provided, instead, that the section 104(a)(2) exclusion may apply to damages recovered for a personal physical injury or physical sickness under a statute that does not provide for a broad range of remedies, and that the injury need not be defined as a tort.

A commentator suggested that eliminating the tort type rights test would create confusion about what constitutes a personal injury. The commentator suggested that the regulations should retain the tort type

rights test but clarify that meeting the test does not depend on the nature of the remedies or the state law characterization of the cause of action.

The final regulations do not adopt this comment. Before the 1996 amendment, the section 104(a)(2) exclusion was not limited to damages for physical injuries or sickness. The tort-type rights test was intended to distinguish damages for personal injuries from, for example, damages for breach of contract. Since that time, however, *Commissioner v. Schleier*, 515 U.S. 323 (1995), has interpreted the statutory “on account of” test to exclude only damages directly linked to “personal” injuries or sickness. Furthermore, under the 1996 Act, only damages for personal physical injuries or physical sickness are excludable. These legislative and judicial developments have eliminated the need to base the section 104(a)(2) exclusion on tort cause of action and remedy concepts.

A commentator requested that the final regulations address whether a claimant has constructive receipt or the current economic benefit of a damage award that is set aside for the claimant’s benefit in a trust or fund, such as a qualified settlement fund described in § 1.468B–1. Other commentators asked that the final regulations define certain personal injuries as physical injuries and describe the circumstances in which emotional distress is attributable to physical injuries.

The final regulations do not adopt these comments because they are beyond the scope of the proposed regulations, which did not propose rules on the issues raised by the comments. However, these comments will be considered if guidance is published on these topics in the future.

**Effective/Applicability Date**

These regulations apply to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. This September 13, 1995, effective date derives from an exception set forth in section 1605(d)(2) of the 1996 Act to the statutory effective date of the amendments to section 104(a)(2).

In addition, taxpayers may apply these regulations to amounts paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996, and if otherwise eligible may file a claim for refund for a taxable year for which the period of limitation on credit or refund under

section 6511 has not expired. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of the 1996 Act, including the requirement that excludable damages must be received on account of personal physical injuries.

**Special Analyses**

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. 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 final 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 these regulations is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). 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 continues to read in part as follows:

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

■ **Par. 2.** In § 1.104–1, paragraph (c) is revised to read as follows:

**§ 1.104–1 Compensation for injuries or sickness.**

\* \* \* \* \*

(c) *Damages received on account of personal physical injuries or physical sickness—(1) In general.* Section 104(a)(2) excludes from gross income the amount of any damages (other than

punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. Emotional distress is not considered a physical injury or physical sickness. However, damages for emotional distress attributable to a physical injury or physical sickness are excluded from income under section 104(a)(2). Section 104(a)(2) also excludes damages not in excess of the amount paid for medical care (described in section 213(d)(1)(A) or (B)) for emotional distress. For purposes of this paragraph (c), the term *damages* means an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution.

(2) *Cause of action and remedies.* The section 104(a)(2) exclusion may apply to damages recovered for a personal physical injury or physical sickness under a statute, even if that statute does not provide for a broad range of remedies. The injury need not be defined as a tort under state or common law.

(3) *Effective/applicability date.* This paragraph (c) applies to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. Taxpayers also may apply these final regulations to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996. If applying these final regulations to damages received after August 20, 1996, results in an overpayment of tax, the taxpayer may file a claim for refund before the period of limitations under section 6511 expires. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of section 1605 of the Small Business Job Protection Act of

1996, Public Law 104–188 (110 Stat. 1838).

\* \* \* \* \*

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 6, 2011.

**Emily S. McMahon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2012–1255 Filed 1–20–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

**RIN 1545–BK53**

#### Dividend Equivalents From Sources Within the United States

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to dividend equivalents for purposes of section 871(m) of the Internal Revenue Code (Code). The regulations provide guidance to nonresident aliens and foreign corporations that hold notional principal contracts (NPCs) providing for payments determined by reference to payments of dividends from sources within the United States. The text of the 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 in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective January 23, 2012.

*Applicability Date:* For dates of applicability, see §§ 1.863–7T(f), 1.871–16T(g), 1.881–2T(f), 1.1441–2T(g), 1.1441–3T(k), 1.1441–4T(h), 1.1441–7T(h), and 1.1461–1T(j).

**FOR FURTHER INFORMATION CONTACT:** Mark E. Erwin or D. Peter Merkel at (202) 622–3870 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains temporary regulations under section 871(m). Congress enacted section 871(m) (originally designated as section 871(l)) on March 18, 2010 in section 541 of the Hiring Incentives to Restore Employment Act (HIRE Act), Public Law 111–147 (124 Stat. 71).

Section 871(m) applies to securities loans, sale-repurchase transactions

(repos), certain NPCs defined as “specified notional principal contracts” (specified NPCs), and any similar transactions that provide for a payment contingent upon or determined by reference to a U.S. source dividend (dividend equivalent). Section 871(m) treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 871(m) generally applies to any dividend equivalent made after September 14, 2010. With respect to payments made after March 18, 2012, section 871(m)(3)(B) provides that any NPC will be a specified NPC unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

Notice 2010–46, 2010–24 IRB 757, outlined a proposed framework for limiting withholding in the case of a series of securities lending or sale-repurchase transactions. While the Treasury Department and the IRS anticipate issuing proposed regulations addressing the issues raised in Notice 2010–46, these regulations do not address these concerns. See § 601.601(d)(2).

#### **Explanation of Provisions**

Section 1.871–16T(b) of these temporary regulations incorporates the definition of a specified NPC as provided in section 871(m)(3)(A). These temporary regulations extend the applicability of the section 871(m)(3)(A) statutory definition of a specified NPC through December 31, 2012. Proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules Section in this issue of the **Federal Register** outline the proposed treatment of dividend equivalents under section 871(m) beginning January 1, 2013. The Treasury Department and the IRS believe that an extension of the statutory definition of the term specified NPC is necessary to allow taxpayers and withholding agents to modify their systems and other operating procedures to comply with the rules described in the notice of proposed rulemaking.

These temporary regulations also amend several regulations to clarify the application of section 871(m). For example, temporary regulations modify § 1.863–7 to provide that that section does not apply to a dividend equivalent under section 871(m). Section 1.881–2T(b)(3) provides that section 871(m) and § 1.871–16T apply to dividend equivalents received by foreign corporations. Certain regulations under section 1441 have been amended to