LIST OF COMMENTERS*—Continued

Commenter	Short name or acronym
7 Monitoring Analytics, LLC, Potomac Economics, Ltd, Internal Market Monitor for ISO—New England, Market Monitoring and Analysis for Southwest Power Pool, Inc., Market Assessment and Compliance for Independent Electricity System Operator, Market Surveillance Administrator.	Market Monitors**
8 PJM Interconnection, L.L.C. and Southwest Power Pool, Inc	PJM/SPP
9 Pennsylvania Public Utility Commission	Pa Commission
10 Powerex Corp	Powerex
11 Ronald Rattey	Ronald Rattey
12 Southern California Edison Company	SoCal Edison
13 Southern Company Services, Inc	Southern
14 Western Electricity Coordinating Council	WECC

* In addition, Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC filed a motion to intervene without comments.

** Market Monitors filed motion for leave to file reply comments and reply comments in support of access to e-Tags by Reliability Coordinators comparable to that for Commission and MMUs. Reply comments were also filed by the North American Energy Standards Board.

[FR Doc. 2012–31087 Filed 12–27–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9607]

RIN 1545–BJ37

Partner's Distributive Share

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the application of the substantiality de minimis rule. In the interest of sound tax administration, this rule is being made inapplicable. These final regulations affect partnerships and their partners.

DATES: *Effective Date:* The final regulations are effective on December 28, 2012.

Applicability Date: The final regulations under § 1.704–1(b)(2)(iii)(*e*)(*1*) are applicable for partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012. The final regulations under § 1.704–1(b)(2)(iii)(*e*)(*2*)(*i*) are applicable beginning on or after December 28, 2012, and the final regulations under § 1.704–1(b)(2)(iii)(*e*)(*2*)(*ii*) are applicable for partnership taxable years beginning on or after December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Rebecca Kahanel, at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 704 of the Internal Revenue Code (Code). On October 25, 2011, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–109564–10) (the proposed regulations) in the **Federal Register** to remove the de minimis rule in § 1.704–1(b)(2)(iii)(*e*) (the de minimis partner rule). The proposed regulations provide that the final regulations are effective on the date they are published in the **Federal Register**.

The Treasury Department and the IRS did not hold a public hearing because there were no requests to speak at a hearing. However, the Treasury Department and the IRS received comments in response to the proposed regulations.

Explanation of Provisions and Summary of Comments

After consideration of the comments, the final regulations adopt the proposed regulations as modified by this Treasury decision. The comments are discussed in this preamble.

1. Elimination of the Current De Minimis Partner Rule

Commenters generally agreed that the current de minimis partner rule is too broad, is easily abused, and/or is inconsistent with sound tax policy. The Treasury Department and the IRS agree with these commenters that the current de minimis partner rule should no longer be applicable.

2. Alternative Approaches

The preamble to the proposed regulations requests comments on ''how to reduce the burden of complying with the substantial economic effect rules, with respect to look-through partners, without diminishing the safeguards the rules provide.'' In response to this request, some of the commenters requested that future guidance in regulations amend the current de minimis partner rule, and other commenters suggested alternative approaches for de minimis partners and look-through partners. These alternative approaches are discussed in Part 2.a through 2.e of this preamble.

a. Modification of Current De Minimis Partner Rule

A commenter suggested amending the current de minimis partner rule by providing that the de minimis partner rule applies only if: (i) de minimis partners own less than a specified aggregate percentage (for example, 25 percent, 50 percent, or 80 percent) of the partnership; and (ii) the partnership has at least two non-de minimis partners.

b. Reasonable Assumptions Approach

One commenter suggested adopting a ''reasonable assumptions rule'' for de minimis partners and indirect partners. This commenter noted that a partnership must know the tax attributes of its partners in order to determine whether a partnership's allocations are substantial. However, this commenter also explained that many partnerships are comprised of partners that are passthrough entities and it is difficult for these partnerships to obtain information about the tax attributes of their ultimate partners. Thus, this commenter recommended that the Treasury Department and the IRS permit a partnership to make reasonable assumptions about: (1) The tax attributes of any partner that owns (directly, indirectly, and through attribution) not more than a 5 percent interest in the capital or profits of the partnership (each, a de minimis partner); and (2) the identity and tax attributes of any person that owns an interest in the partnership indirectly through one or more ''look-through entities'' (within the meaning of § 1.704–1(b)(2)(iii)(*d*)(*2*)) other than disregarded entities (each, an indirect partner). Under this approach, if a partnership makes reasonable inquiries regarding the tax attributes of all de minimis partners and indirect partners but is unable to obtain the necessary information, then the partnership would be permitted to make reasonable assumptions about the tax attributes of those partners, but only if, in the aggregate, those de minimis partners and indirect partners do not own more than a 30 percent interest in the profits and capital of the partnership.

This commenter further explained that, provided the partnership's assumptions are reasonable, allocations that would be substantial on the basis of those reasonable assumptions would be respected even if those assumptions later are determined to have been incorrect. According to this commenter, whether a partnership's assumptions are reasonable should be determined based on all of the facts and circumstances. This commenter provided several examples of reasonable and unreasonable assumptions (for example, if a partner is identifiable (by its name or otherwise) as a charitable organization or educational institution, it would be unreasonable for a partnership to assume that the partner is a fully taxable individual or corporation).

Similarly, another commenter suggested that the IRS establish ''reasonable presumptions'' as to the tax attributes of the owners of certain look-through entity partners. According to this commenter, these presumptions should be limited to situations in which the partnership does not know or have reason to know of the tax attributes of the owner of the look-through entity partner.

c. Safe Harbor Presumptions

Another commenter recommended that the Treasury Department and the IRS establish safe harbor presumptions for the tax attributes of de minimis partners that do not qualify for the de minimis partner rule and partners that own, directly or indirectly, through a look-through entity, less than 10 percent of the capital and profits of the partnership and are allocated less than 10 percent of each partnership item. The commenter proposed several safe harbor presumptions regarding the relevant tax attributes of such a partner based on the type of partner (for example, if the partner is a nonresident alien) and the type of income the partnership earns (for example, if the partnership earns effectively connected income).

d. Deemed Satisfaction of Section 704(b) in Limited Situations

Another commenter suggested amending the section 704(b) regulations to provide that in a limited number of situations, the partnership would be deemed to satisfy the partnership allocation regulations. According to this commenter, deemed satisfaction would apply to partnerships that qualify, for the current tax year and all prior tax years, as pro rata partnerships, de minimis service partnerships, or de minimis partnerships with de minimis partners. A partnership would be considered a pro rata partnership if all contributions to the partnership are cash; all items of partnership income, gain, loss, deduction, and credit are allocated pro rata based on the partners' relative contributions; all partnership liabilities are shared pro rata based on the partners' relative contributions; and all partnership distributions are made pro rata based on the partners' relative contributions. A partnership would qualify as a de minimis service partnership if the partnership has gross receipts of $5 million or less in each taxable year, 95 percent of the partnership's gross receipts is derived from services, and all partners are individuals who materially participate in the services of the partnership within the meaning of section 469(h). A partnership would be considered a de minimis partnership with de minimis partners if the aggregate fair market value (net of partnership liabilities) or tax basis of partnership property is $5 million or less at all times during the partnership taxable year, the partnership has gross receipts of $5 million or less in each taxable year, and no partner is allocated more than 10 percent of any partnership item.

e. Other Alternative Approaches

Commenters offered other alternative approaches, including lowering the de minimis percentage interest threshold and the income allocation threshold; providing a limitation or threshold on the amount of net taxable income that is reasonably expected to be earned by the partnership or allocated to the de minimis partner each year; prohibiting reliance on the de minimis partner rule if the partnership knows (or has reason to know) of the relevant tax attributes of the de minimis partner and such attributes would cause the allocations not to have substantial economic effect; or promulgating separate de minimis partner rules for large and small partnerships.

The Treasury Department and the IRS believe that the alternative approaches to reduce the burden of complying with the substantial economic effect rules described in Part 2.a through 2.e of this preamble require further consideration due to the issues raised by the complexity of the substantiality rules. Although commenters suggested that removal of the de minimis rule without providing other administrative relief would result in undue burden, the Treasury Department and the IRS have determined that tax administration is best served by providing in the final regulations that the current de minimis rule will no longer be applicable. The Treasury Department and the IRS may address alternative approaches in future guidance, and will consider the comments on alternative approaches at that time.

3. Effective/Applicability Date

Whether an allocation is considered to be substantial is generally determined at the time the allocation becomes part of the partnership agreement. The final regulations provide that the de minimis partner rule does not apply to allocations that become part of the partnership agreement on or after December 28, 2012.

With respect to existing allocations, one commenter suggested that the de minimis partner rule was sufficiently flawed that it should be promptly removed, and that it should not continue to apply to allocations that became part of the partnership agreement prior to its removal. The Treasury Department and the IRS agree with this comment. Accordingly, these final regulations are effective, and therefore the de minimis partner rule of § 1.704–1(b)(2)(iii)(*e*) is no longer applicable, for all partnership taxable years beginning on or after December 28, 2012, regardless of when the allocation became part of the partnership agreement. Thus, the substantiality of all partnership allocations, regardless of when they became part of the partnership agreement, must be retested without the benefit of the de minimis partner rule. For allocations in existing partnership agreements, the retest has to be as of the first day of the first partnership taxable year beginning on or after December 28, 2012.

Special Analyses

It has been determined that 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. 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 regulation does 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 Code,* these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these final regulations is Michala Irons, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS 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.** Section 1.704–1(b)(2)(iii)(*e*) is revised to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*e*) *De minimis rule*—(*1*) *Partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012.* Except as provided in paragraph (b)(2)(iii)(*e*)(*2*) of this section, for purposes of applying this paragraph (b)(2)(iii), for partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012, the tax attributes of de minimis partners need not be taken into account. For purposes of this paragraph (b)(2)(iii)(*e*)(*1*), a de minimis partner is any partner, including a look-through entity that owns, directly or indirectly, less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. See paragraph (b)(2)(iii)(*d*)(*6*) of this section for the definition of indirect ownership.

(*2*) *Nonapplicability of de minimis rule.* (*i*) *Allocations that become part of the partnership agreement on or after December 28, 2012.* Paragraph (b)(2)(iii)(*e*)(*1*) of this section does not apply to allocations that become part of the partnership agreement on or after December 28, 2012.

(*ii*) *Retest for allocations that become part of the partnership agreement prior to December 28, 2012.* If the de minimis partner rule of paragraph (b)(2)(iii)(*e*)(*1*) of this section was relied upon in testing the substantiality of allocations that became part of the partnership agreement before December 28, 2012, such allocations must be retested on the first day of the first partnership taxable year beginning on or after December 28, 2012, without regard to paragraph (b)(2)(iii)(*e*)(*1*) of this section.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–31155 Filed 12–21–12; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, and 602

[TD 9605]

RIN 1545–BG31; 1545–BL38

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains both final regulations and temporary regulations regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type III supporting organizations and their supported organizations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Preston J. Quesenberry at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2157. The collection of information in the final regulations is in § 1.509(a)–4(i)(2) and § 1.509(a)–4(i)(6)(v). The collection of information under § 1.509(a)–4(i)(2) flows from section 509(f)(1)(A) of the Internal Revenue Code (Code), which requires a Type III supporting organization to provide to each of its supported organizations such information as the Secretary may require to ensure that the Type III supporting organization is responsive to the needs or demands of its supported organization(s). The collection of information under § 1.509(a)–4(i)(6)(v) is required only if a Type III supporting organization that is not functionally integrated wishes for certain amounts set aside for a specific project to count toward the distribution requirement imposed by § 1.509(a)–4(i)(5)(ii). The likely recordkeepers are Type III supporting organizations and certain of their supported organizations.

Estimated total annual reporting burden: 15,122 hours.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated number of recordkeepers: 7,556.

Estimated frequency of collection of such information: Annual.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and Foundation Excise Tax Regulations (26 CFR part 53) regarding organizations described in section