

Notice of Proposed Rulemaking

Filing Requirements for Returns Claiming the Foreign Tax Credit

REG-208288-90

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the substantiation requirements for taxpayers claiming foreign tax credits. The proposed regulation is necessary to provide guidance to U.S. taxpayers who claim foreign tax credits.

DATES: Written comments and requests for a public hearing must be received by April 14, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-208288-90), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-208288-90), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at [HTTP://www.irs.ustreas.gov/prod/tax_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Joan Thomsen, (202) 622-3840 (not a toll-free call); concerning submissions, Evangelista Lee, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1988, the Internal Revenue Service issued a Notice (Notice 88-65, 1988-1 C.B. 552) which stated that regulations would be issued suspending portions of § 1.905-2 of the Treasury Regulations. Section 1.905-2 requires taxpayers who claim foreign tax credits to attach documents to their returns substantiating the credits. The Notice was issued in response to problems taxpayers were experiencing be-

cause they could not timely obtain and prepare the necessary documentation in a form suitable for submission with their tax returns. The intent of the Notice was to advise taxpayers that Treasury and the IRS would issue a new regulation that would suspend, beginning on January 1, 1988, the existing regulation requiring the submission of this documentation with a tax return. This new regulation has not been issued. Instead of suspending the relevant portions of the existing regulation, Treasury and the IRS now have decided to permanently eliminate the requirement that documentation be submitted with the tax return, effective January 1, 1988.

Explanation of Provisions

§ 1.905-2(a)(1), 1.905-2(b)(1) and (2), and 1.905-2(c)

Sections 1.905-2(a)(1), 1.905-2(b)(1) and (2), and 1.905-2(c) are unchanged from the final regulations.

§ 1.905-2(a)(2)

Under § 1.905-2(a)(2), taxpayers generally are required to attach to their income tax returns either (1) the receipt for the foreign tax payment, or (2) a foreign tax return for accrued foreign taxes. Proposed § 1.905-2(a)(2) removes the requirement that the documentation must be attached to the income tax return. The proposed regulation now provides that such evidence of foreign taxes must be presented to the district director upon request.

§ 1.905-2(b)(3)

Section 1.905-2(b)(3) addresses issues for taxes withheld at the source. The section allows the district director to accept secondary evidence of such withholding. The proposed regulation clarifies that evidence of a tax withheld at the source and the amount withheld is only sufficient for an interim credit. Upon request of the district director, taxpayers must provide evidence, as provided in § 1.905-2(a)(2), that the tax withheld was actually paid to the foreign country. Although this regulation will be effective on the date that is 30 days after the date the final regulation is published in the **Federal Register**, it reflects an IRS requirement upheld as a reasonable interpretation of current law by the Tax Court and the Court of

Appeals for the Seventh Circuit in *Continental Illinois Corp. v. Commissioner*, T.C. Memo. 1991-66, 61 T.C.M. (CCH) 1916, 1939-42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516-17 (7th Cir. 1993).

Special Analyses

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 Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, 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 Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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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 26 CFR part 1 continues to read in part as follows:

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

Par 2. Section 1.905-2 is amended by:

1. Revising the second through fourth sentences in paragraph (a)(2).

2. Adding two sentences to the end of paragraph (b)(3).

The revision and addition read as follows:

§ 1.905-2 *Conditions of allowance of credit.*

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or withheld, or the return on which each such accrued tax was based if credit is sought for taxes accrued. This receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are effective for returns whose original due date falls on or after January 1, 1988. * * *

(b) * * *

(3) * * * Any foreign tax credit claimed for taxes withheld at the source is an interim credit and the taxpayer must prove that any taxes withheld at the source were paid to the foreign country, as required in paragraph (a) of this section. The preceding sentence is effective the date that is 30 days after the date this regulation is published in the **Federal Register** as a final regulation, however, for periods prior to the date that is 30 days after the date this regulation is published in the **Federal Register** as a final regulation, see *Continental Illinois Corp. v. Commissioner*, T.C. Memo. 1991-66, 61 T.C.M. (CCH) 1916, 1939-42 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516-17 (7th Cir. 1993), wherein the court upheld this rule as a reasonable interpretation of section 905(b) of the Internal Revenue Code.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 10, 1997, 8:45 a.m., and published in the issue of the Federal Register for January 13, 1997, 62 F.R. 1700)